

# Open Research Online

---

The Open University's repository of research publications and other research outputs

## A study of wills and will-making in the period 1500-1533 with special reference to the copy wills in the probate registers of the Archdeacon of Bedford 1489-1533

Thesis

How to cite:

Ford, Judith (1992). A study of wills and will-making in the period 1500-1533 with special reference to the copy wills in the probate registers of the Archdeacon of Bedford 1489-1533. PhD thesis The Open University.

For guidance on citations see [FAQs](#).

© 1992 The Author



<https://creativecommons.org/licenses/by-nc-nd/4.0/>

Version: Version of Record

Link(s) to article on publisher's website:

<http://dx.doi.org/doi:10.21954/ou.ro.0000e02c>

---

Copyright and Moral Rights for the articles on this site are retained by the individual authors and/or other copyright owners. For more information on Open Research Online's data [policy](#) on reuse of materials please consult the policies page.

---

[oro.open.ac.uk](http://oro.open.ac.uk)

D

**A STUDY OF WILLS AND WILL-MAKING IN THE PERIOD 1500-1533  
WITH SPECIAL REFERENCE TO THE COPY WILLS IN THE PROBATE  
REGISTERS OF THE ARCHDEACON OF BEDFORD, 1489-1533.**

**by**

**Judith Ford, B.A. (Hons.)**

**Department of History, The Open University**

**Thesis submitted in the Faculty of Arts of the Open University for the degree of  
Doctor of Philosophy September 1991**

~

I would like to thank my supervisor, Dr Rosemary Englander, the Open University, for her guidance, support and encouragement during the writing of this thesis. I would also like to thank my examiners, Dr Joan Thirsk, St Hilda's, Oxford and Dr Catherine King, The Open University

## **ABSTRACT**

Historians sometimes use information derived from sources the nature and function of which they do not fully understand. Wills and testaments from the medieval and early modern periods provide a notable example of this practice; they have been used by historians for the information which they provide on a variety of subjects but have rarely been studied as documents in their own right. As a result, an understanding of the character of wills and testaments and of their utility for the historian has remained limited, and information derived from wills has not always been interpreted satisfactorily.

This study involves the detailed examination of a group of Bedfordshire wills made over a thirty-three year period during the early sixteenth century with the intention of promoting a better understanding of this popular source of historical evidence.

The seven hundred and eighty wills which form the nucleus of the study are recorded in the first three surviving registers of the court of the Archdeacon of Bedford. The information provided by the wills themselves will be evaluated in the context of the work of historians who have used information derived from wills, both from Bedfordshire and elsewhere, and in the context of early sixteenth-century law and custom.

Particular attention is given to the interaction of the last will and testament with the medieval law of succession and to the problems which the complexity of the rules, principles and laws governing the succession to property provide for those who seek to interpret bequests of both personalty and realty.



## **CONTENTS**

<b>Abstract</b>	<b>iii</b>
<b>Contents</b>	<b>iv</b>
<b>Table of Abbreviations</b>	<b>viii</b>
 <b>PART ONE: WILLS AND WILL-MAKING IN THE EARLY SIXTEENTH CENTURY</b>	
<b>Chapter One: Introduction.</b>	<b>1-7</b>
<b>Chapter Two: The Legal Background to Will-making</b>	<b>8-29</b>
Definition of a Last Will and Testament	9-15
The Association of Will-making and the Last Confession	15-16
The Development of Ecclesiastical Jurisdiction Over Testaments	16-29
<b>Chapter Three: Will-making and the Process of Probate</b>	<b>30-99</b>
The Circumstances in Which a Will Was Made	31-33
Who Wrote the Will?	33-39
The Influence of Formularies	39-43
The Language of the Will	43-45
The Form of the Will	45-46
Preambles	46-54
The Body	54-56
Mortuary	56-59
Charitable Bequests	59-71
Bequests of Personal Goods	71-76
Bequests of Real Property	76-78
Executors	78-82
Supervisors	82-84

Witnesses	84-87
Probate	87-90
Fees	91
Speed of Probate	92-93
Jurisdiction	93-95
Probate in Common Form	95-96
Probate in Solemn Form	96-97
The Probate Act	97-99
<b>Chapter Four: The Will-making Population</b>	<b>100-137</b>
Contested Capacity	101
i. Married Women	101-106
ii. Infants	106-107
iii. Villeins	107-110
Other Groups Denied Testamentary Capacity	110-112
The Size of the Will-making Population	112-115
The Social Distribution of the Will-making Population	115-135
The Geographical Distribution of Testators	135-137
 <b>PART TWO: BEQUESTS OF REAL PROPERTY</b>	
<b>Chapter Five: The Inheritance of Land in the Early Sixteenth Century</b>	<b>139-146</b>
The Rules of Inheritance	140-142
The Use	142-146
 <b>Chapter Six: The Bedfordshire Wills and the Use</b>	<b>147-161</b>
 <b>Chapter Seven: The Bedfordshire Wills and Inheritance Strategies</b>	<b>162-204</b>
The Background	163-166

Partible and Non-partible Succession	166-175
The Inheritance of Land by Females in Early Sixteenth-Century Bedfordshire	175-180
Provision for Widows	181-186
Bequests of Real property to Ascendants	186-188
Meritocratic Inheritance Strategies	188-189
Conditions Attached to Bequests of Land	189-194
The Enforcement of Conditional Bequests	194-195
The Influence of Custom on Conditions Attached to Bequests of Land	195-199
Age at Inheritance	199-204
<b>Case Study: The Wills of Robert and Anne Spencer</b>	205-226
The Will of Robert Spencer	207-215
The Will of Anne Spencer	216-221
<b>Conclusion</b>	222-226
<b>Appendix One: Facsimiles of the Wills of Three of the Bedfordshire Testators:</b>	228-235
i. The Will of Simon Sakwyle of Riseley.	229-230
ii. The Will of Agnes Butt of Elstow.	231-234
iii. Partial View of the Wills of Robert and Anne Spencer of Cople.	235
<b>Glossary</b>	236-239
<b>Bibliography:</b>	240-264
1 Primary Sources	240
2 Printed Primary Sources	241-243
3 Secondary Sources	244-264

i. List of Works frequently Cited	244
ii. Books	245-257
iii. Articles	257-263
iv. Theses	263-264
v. Typescript	264

**Back Pocket:**

Map 1: Bedfordshire Parishes

Map 2: Bedfordshire: Distribution of Testators by Parish

## TABLE OF ABBREVIATIONS

ABP/R	Archdeaconry of Bedford Probate Records: Register Wills
ABP/W	Archdeaconry of Bedford Probate Records: Original Wills
Beds. C.R.O.	Bedfordshire County Record Office
Beds. C.R.O. P	Bedfordshire County Record Office Paper
B.H.R.S.	Bedfordshire Historical Record Society
Brit.Lib.M.S.	British Library Manuscript
C.R.T.	County Records Typescript
D. & C.R.S.	Devon and Cornwall Record Society
L.R.S.	Lincoln Records Society
N.R.S.	Northamptonshire Record Society
O.R.S.	Oxfordshire Record Society
P.C.C.	Prerogative Court of Canterbury
P.C.C. PROB	Prerogative Court of Canterbury Probate Records
P.R.O.	Public Record Office
S.R.S.	Somerset Record Society

## CHAPTER ONE

### INTRODUCTION

During the last thirty years, wills and testaments which survive from the medieval and early modern periods have become popular sources of information with historians from a variety of disciplines.<sup>1</sup> However, interest in wills as sources of historical evidence has not always been matched by an understanding of the character and function of the document itself. Historians have frequently been content to evaluate the nature of a will in a brief and superficial manner. W.K. Jordan, for example, in his major study of charitable bequests in England between 1480 and 1660, devoted less than two pages to his discussion of 'wills as sources' although wills and testaments formed his principal source of information.<sup>2</sup>

It must be acknowledged that both before and since the publication of Jordan's study, the problems and limitations associated with using information derived from wills, and doubts about the possibility of satisfactorily interpreting such information, have been expressed by some historians. Yet these discussions and doubts, which might have been expected to contribute to a greater understanding of the will, have largely been confined to the section of the will in which a particular historian has been interested and a broad evaluation of the nature and function of wills has not been achieved. Thus, for example, historians studying the religious 'preambles' of wills have observed some of the problems associated with interpreting the religious beliefs expressed in the bequest of the soul (sometimes with reference to bequests which appear later in the same will) but have not necessarily taken the further step of evaluating the document as a whole, or of examining the preamble within this

---

<sup>1</sup> A full list of historical works in which information derived from wills has been used would be impractical here; some major examples are: W.K. Jordan's study of the changing pattern of English social aspirations, Philanthropy in England, 1480-1660, 1959; Margaret Spufford, Contrasting Communities: English Villages in the Sixteenth and Seventeenth Centuries, Cambridge, 1974; J.H. Moran, The Growth of English Schooling, 1340-1548, Princeton, 1985.

<sup>2</sup> Jordan, Philanthropy ... pp. 22-23.

context.<sup>3</sup>

Valuable work has been carried out by historians such as Margaret Spufford and Cicely Howell, who have studied information derived from wills in the context of the community in which the testator lived and worked, and in association with other contemporary documents, and they have undoubtedly advanced the understanding of the character and utility of last wills and testaments. However, it can be said that these historians have studied wills primarily as sources of information rather than as documents in their own right.<sup>4</sup>

After more than thirty years of interest in medieval and early modern wills the historians' knowledge and understanding of this source of information apparently remains both limited and superficial, and this may have led to the misuse and misunderstanding of the document which is the subject of this thesis. As Clive Burgess has recently observed:

Historians ... have been so engaged in sorting and interpreting wills' minutiae that they have neglected to question basic assumptions concerning the reliability of their evidence.

His study of testamentary evidence and pious convention has led Burgess to question the value of 'pressing wills into historical service' but at the same time to acknowledge that 'the detail and variety of wills' content proscribes any thought of discarding them'.<sup>5</sup> Clearly, if information derived from wills is to be satisfactorily

---

<sup>3</sup> See for example, the caution expressed by A.G. Dickens over the utilization of the 'preambles' of wills for establishing the religious beliefs of testators in Lollards and Protestants in the Diocese of York, 1509-1558, Oxford, 1959. pp. 171-172, 220-221.

<sup>4</sup> Spufford, Contrasting Communities ...; Cicely Howell, 'Peasant Inheritance Customs in the Midlands, 1280-1700', in Jack Goody, Joan Thirsk and E.P. Thompson (eds), Family and Inheritance: Rural Society in Western Europe, 1200-1800, Cambridge, 1978, pp. 112-155.

<sup>5</sup> Clive Burgess, 'Late Medieval Wills and Pious Convention: Testamentary Evidence Reconsidered', in Michael A. Hicks (ed.), Profit, Piety and the



evaluated, a comprehensive understanding of the document in question is vital.

Interest in the nature and function of wills and testaments beyond a fragmented and superficial level has largely been confined to historians of the law, who have traced the development of the will and testament and examined their function within the context of the laws relating to the succession of property. These legal studies contain plentiful and interesting examples of wills or particular bequests, but have not involved the detailed examination of a particular group of wills.<sup>6</sup>

The one major study of medieval wills to be carried out by a non-legal historian in the last thirty years, Michael Sheehan's The Will in Medieval England, published in 1963, investigated the 'rather complex historical evolution that produced the last will in English law' and attempted to interpret the development of the will:

in terms of the desires and needs of society, to show the motives that caused it to appear and its effects on the law of succession and the accumulation of family fortunes.<sup>7</sup>

Sheehan's valuable and extensive study traces the development of the will from its Anglo-Saxon origins through to the second decade of the reign of Edward I. For those historians studying later wills (and wills survive in greater numbers from the fifteenth century onwards, than from the earlier medieval period),<sup>8</sup> Sheehan's work provides an understanding of the evolution of the early development of the will

---

<sup>6</sup> Professions in Later Medieval England, Gloucester, 1990, p. 15.

<sup>6</sup> See, for example (Sir) F. Pollock and F.W. Maitland, The History of English Law Before the Time of Edward the I, reprint of the 2nd edition of 1898, Cambridge, 1968, vol. ii, pp. 314-356; (Sir) William Holdsworth, A History of English Law, 7th edition, 1956, vol. iii, pp. 535-550.

<sup>7</sup> Michael Sheehan, The Will in Medieval England, Toronto, 1963, p. 2.

<sup>8</sup> J.S.W. Gibson, Wills and Where to Find Them, Chichester, 1974, lists original and register wills which are extant for each county in the British Isles. Numbers of wills are not given; many groups of wills remain uncounted and un-indexed; see also A.J. Camp, Wills and Their Whereabouts, 4th edition, 1974 and J.J. Scarisbrick, The Reformation and the English People, Oxford, 1981, chapter one.

but may be regarded as of limited use for the interpretation of later wills, unless the nature and function of wills, and of the laws pertaining to will-making, are assumed to be unchanging. Examination of any legal study of the will can reveal to the historian the error of such an assumption. Henry Swinburne's A Brief Treatise of Testaments and Last Wills, for example, first published in 1590,<sup>9</sup> in which the laws and customs which governed will-making in the later sixteenth century are comprehensively set out, and in which the author refers to rules and customs which obtained in the later medieval period, shows clearly how these rules could change within a comparatively short period of time.

Between the reign of Edward I and the opening of the sixteenth century the laws relating to the succession of both personal and real property underwent considerable change. Some developments were regional rather than national. The custom of *legitim*, which governed the disposition of chattels, declined in most areas of the province of Canterbury during the later medieval period but survived in the northern province until the end of the seventeenth century.<sup>10</sup> The development of the device of the use, which allowed an individual to dispose of real property at death and which circumvented the common law rules pertaining to the succession of land, was, however, of national significance. A greater understanding of wills and testaments would therefore seem to require not only an appreciation of the history and development of the will and of the laws and customs relating to will-making and to the succession of property, but also a due regard for the character of wills and testaments from a particular locality and of their possibly evolving nature over a given period.

This study will attempt to develop the historian's understanding of wills and

---

<sup>9</sup> Henry Swinburne, A Brief Treatise of Testament and Last Wills, 1590.

<sup>10</sup> Pollock and Maitland, The History..., vol. ii, p. 348; the custom of *legitim* is discussed more fully in chapter two of this study.

testaments with a detailed examination of a particular group of wills, set within a framework of relevant law and custom.

The documents which form the basis of this study are the seven hundred and eighty wills which were made between 1500 and 1533 and which are recorded in the first three surviving registers of the court of the Archdeacon of Bedford.<sup>11</sup> Register wills have been used in this study because no original wills survive from Bedfordshire before 1536.<sup>12</sup>

Copy wills have certain disadvantages for the historian; the individuality of the original document is lost, or at least obscured, and it is impossible to establish how accurately the form and content of the original will has been recorded. However, the register wills provide the only opportunity of studying wills in early sixteenth-century Bedfordshire, a period in which the laws and customs governing the descent of property were undergoing discussion and revision which were to culminate in major and fundamental changes in the law of succession. These changes were embodied, most notably, in the Statute of Uses of 1536 and the Statute of Wills of 1540.<sup>13</sup> Since wills and will-making can be fully understood only in the context of

---

<sup>11</sup> Bedfordshire County Record Office, ABP/R 1, 2, and 3. The wills contained in the first register (ABP/R 1), which were made before 1500, have been omitted from this study. A quarter of the wills used in this study were recorded partially or wholly in Latin. English transcriptions of the greater part of each of these wills exist in Bedfordshire County Record Office. Where possible, these transcriptions have been used. Sections of wills omitted in these transcriptions have been translated by the author.

<sup>12</sup> The earliest individual (that is, non-register) will which survives in the Bedfordshire County Record Office was made in the year 1536. There are only seventeen non-register wills extant which were made between 1536 and 1548. From the latter date the numbers of 'original' wills increases and by 1560 the majority of wills proved (that is, those also recorded in the probate registers) appear to have survived (Beds. C.R.O. ABP/W 7, 8 and 10). The term 'original' is probably imprecise; these non-register wills were almost certainly copies. Until about 1600 the original will was normally kept by the executor. See Camp's observations on this point in Wills and Their Whereabouts, Introduction.

<sup>13</sup> 27 Hen. VIII, c. 10 and 32 Hen. VIII, c. 1 respectively.

the law of succession, the opening decades of the sixteenth century provide rich, if complex ground for research.

The early sixteenth-century probate records of the court of the Archdeacon of Bedford are more extensive than other such records which survive for many jurisdictions, and allow the detailed and comprehensive study of a substantial group of wills.

The first part of the study falls into three main sections; chapter two will place the Bedfordshire wills in the context of the laws, customs and principles relating to the succession of personal and real property in the early sixteenth century. Chapter three will explore the process of the making and proving of a will, and chapter four will examine the will-making population.

The second part of the study will evaluate the bequests of real property which are contained in the Bedfordshire wills by examining the evidence provided by the wills in the context of the inheritance of land in the early sixteenth century (chapter five), with particular reference to the device of the use (chapter six) and inheritance strategies (chapter seven). At the conclusion of this second section the wills of two of the Bedfordshire testators under study, Robert and Anne Spencer, will be examined in the light of the information provided by the previous chapters.

## **CHAPTER TWO**

### **THE LEGAL BACKGROUND TO WILL-MAKING**

## Definition of a 'Last Will and Testament'

This chapter will attempt an initial definition of what is meant by a 'last will and testament' (with due regard for Henry Swinburne's warning that 'definitions are said to be dangerous in law')<sup>1</sup> and establish the place of the last will in the general context of law in the early sixteenth century. The laws relating to will and testament-making during the period under study will be discussed in detail at the appropriate point in ensuing chapters.

At the end of the sixteenth century Swinburne defined a testament as 'a just sentence of our will, touching that we would have done after our death ...',<sup>2</sup> but he observed that others may define a solemn testament as the

appointment of an executor or testamentary heir, made according to the formalities prescribed by law.<sup>3</sup>

These two definitions would seem to indicate the existence of two different, but inter-related aspects to a will and testament; first came the intention of the testator (frequently with reference to the disposition of his devisable property and earthly remains after his death, see below). Then came the necessity to appoint a representative to fulfil these intentions for the deceased.

The ecclesiastical courts, under the guidance of civil and canon lawyers were adamant in their assertion of this necessity, and cited the Roman law rule that the essence of a *testamentum* was the appointment of an *haeres*, or representative, of the testator, and that there could be 'no true testamentum without the appointment of an executor'.<sup>4</sup> Without such an appointment, there could be an *ultima voluntas*, the 'last

---

<sup>1</sup> Swinburne, *Testaments*, p. 4.

<sup>2</sup> Swinburne, *op. cit.*, p. 3.

<sup>3</sup> Swinburne, *op. cit.*, p. 4.

<sup>4</sup> Holdsworth, *A History*, vol. iii, p. 537.

wishes' and intentions of the deceased but not a true testament. However, as Holdsworth observed, this rule became meaningless since, in the absence of an executor, the *ultima voluntas* would be given effect to by the ordinary, by means of the appointment of an administrator.<sup>5</sup> The major difference between an executor and an administrator was that when the executor died, his (or her) executorial duties would pass to his own executor, while in the event of the death of an administrator this was not the case, and the ordinary would make a new appointment.<sup>6</sup> Thus, while a rule existed that the appointment of an executor was necessary for the creation of a testament, in practice the 'last wishes' and intentions of the dead, where they were clearly established (see chapter three) would be enacted even if no such appointment was made.

However, it would be wrong to assume that the terms 'testament' and 'last will' are distinguishable by defining a 'testament' as necessarily a formal document or expressed intention, with the appointment of an executor, and the 'last will' as an informal utterance, where no such appointment was made. A 'testament' could also be a testifying or declaring of the mind of an individual and hence the terms 'last will' and 'testament' may be used indifferently.<sup>7</sup>

To add further complication, the application of the term 'last will' changed to some extent during the medieval period. Whereas the 'last will' had traditionally referred to the intentions of the testator declared just before death (a testament might be made by a dying man, and a last will be added very shortly before he died),<sup>8</sup> the development of a device known as the 'use' (see below and chapter six), provided

---

<sup>5</sup> Holdsworth, *A History* ..., vol. iii.

<sup>6</sup> Holdsworth, *op. cit.*, pp. 566-567.

<sup>7</sup> Swinburne, *... Testaments*, p. 1; Sheehan, *The Will* ..., p. 19.

<sup>8</sup> J.W.M. Bean, *The Decline of English Feudalism*, Manchester, 1968, p. 149; Sheehan, *The Will* ..., p. 19; Holdsworth, *A History* ..., vol. iii, p. 537.

individuals with the freedom, denied to them by common law from as early as the thirteenth century, to devise their real property and the term *ultima voluntas* came to be used for wills of land, while the 'testament' usually contained only 'spiritual and charitable' bequests of personal goods.

Both the indifferent usage of the terms 'testament' and 'last will' and their separate applications can be observed in the Bedfordshire wills under study. John Manne of Eton, for example, who made his will on the 8th of January 1520, declared at the beginning of the document that he intended to 'make my testament in this manner ...' and at the end of the same document stated that 'of this my last will I make my wife sole executrix'. In the probate act following this will in the register, the testator's wife is recorded as being the executrix of the 'testament' only, reflecting that, in theory, an executor was not supposed to have anything to do with the deceased's real property (see below and page 78).<sup>9</sup>

In a document where the bequests of land are made separately from the charitable bequests of personalty the testator might refer to these two different types of property under different headings. Thomas Carter of Beston in Northill, for example, whose will is dated the 9th of November 1515, declared at the start of his bequests of personalty that he intended to 'make my testament in this Wise', and after naming his executors and witnesses and completing the 'testament', began his bequests of land with the words 'This is the last will of me Thomas Carter ...' (the two sections of this 'will' are recorded in the probate register with a distinct space between them).<sup>10</sup>

A 'last will and testament' could, therefore, together and separately, be the expressed intention of the testator as to what he or she intended to happen after death,

---

<sup>9</sup> Beds. C.R.O. ABP/R 2, p. 167d.

<sup>10</sup> Beds. C.R.O. ABP/R 1, p. 210.



frequently with reference to property. This 'property' need not, in theory, be of a material nature, since most testators bequeath first their soul to God, a reflection and result of the original and pre-eminent purpose of will-making. As Maitland noted of medieval wills, 'The testator's first thought is ... of the future welfare of his immortal soul and his mortal body'.<sup>11</sup> Although, it can be argued that both the original purpose, and the function of the last will and testament as it developed during the medieval period, implied the disposition of material property (see page 15) in order to safeguard the soul, and ensure the disposal of earthly remains in a manner and location approved by the testator.

Furthermore, the establishment of these intentions did not necessarily have to be in the form of a written declaration. A will could be either written or nuncupative (that is, verbal), and might be partly written and partly nuncupative. A verbal *codicil* could be annexed to a written will.<sup>12</sup> During the period under study, as Swinburne observed:

if notes were taken by another, but by the directions of the testator, and afterwards put into writing in the form of a will, and the testator died before it was showed or read to him, this was a good will.<sup>13</sup>

Where a will was made by word of mouth, it would remain nuncupative, 'notwithstanding the reducing thereof into writing'.<sup>14</sup>

Both a written and a nuncupative will had in common the theoretical necessity of the appointment of an executor, but in the case of a nuncupative will, the contents could not be kept secret from the witnesses, as they could in witness to a written will,

---

<sup>11</sup> Pollock and Maitland, *The History* ..., vol. ii, p. 338.

<sup>12</sup> Holdsworth, *A History* ..., vol. iii, pp. 537-538.

<sup>13</sup> Swinburne, *... Testaments*, p. 6.

<sup>14</sup> Swinburne, *op. cit.*, p. 44.

where the witnesses had only to observe the signing or sealing of the will, or the acknowledgement of the testator that his wishes had been understood (see chapter three). After 1532, however, a written will was required for bequests of land (that is, land which was devisable by custom).<sup>15</sup>

The documents under study, wills which were proved in the court of the Archdeacon of Bedford between 1500 and 1533, and which were recorded in the probate registers of that court could, therefore, be examples of both nuncupative and written wills.

It will be observed in chapter three that a high proportion of the Bedfordshire testators may have made their will during mortal illness, and that few wills provide evidence that the document was written by the testator. Many of the wills under study may therefore have been nuncupative, but only two wills include a specific declaration of this fact. The scribe of the testament of John Craue of Colmworth (dated the 6th of March 1500), declared that the document was:

made before sir Edmund Flecher chaplain of the same vill, Richard Craue, Thomas Whyte, and many others who both saw and heard.<sup>16</sup>

The integrated will and testament of John Savage, also of Colmworth, which was drawn up on the 10th of June (? 1501), begins with an almost identical declaration:

Witnesses who both heard and saw, Sir Edmund Flecher Chaplain  
Thomas Decans Richard Smyzth.<sup>17</sup>

The presence of Edmund Flecher at the making of both wills may indicate that he was the scribe of these documents and that he was responsible for the declaration of their

---

<sup>15</sup> Swinburne, *... Testaments*, p. 45.

<sup>16</sup> Beds. C.R.O. ABP/R 1, p. 12d.

<sup>17</sup> Beds. C.R.O. ABP/R 1, p. 29.

nuncupative character.

Why this individual, alone among the numerous Bedfordshire scribes, felt that it was necessary or desirable to include this detail in the written document is unclear. Other Colmworth wills, in the group under study, do not include such a declaration, neither do they include the name of Sir Edmund Flecher. It is possible therefore, that this wording was entirely idiosyncratic. On the other hand, these two wills, which were recorded and registered in the early years of the century may have been influenced by a formulary, or at least an accepted form in the parish of Colmworth which became obsolete or altered with the arrival of a new scribe. This may indicate that the individual scribe was the usual arbiter of many of the details of the form of an individual will, and that the accepted form of a will and testament might change within a parish at fairly regular intervals (see below, pages 50-54).

Details of the character of the original declaration are generally lacking in the Bedfordshire wills. The few wills which do include such information reflect a concern that the will and testament in question will be enacted with speed and accuracy. For example, John Stokes, clerk and parson of Wymington declared at the conclusion of his will, which is dated the 26th of April 1520:

I have set my seale and subscribed myn name with myn owne hand ... and to make this will formal after dew form of the law, so that it be done according to my full intent and purpose ...<sup>18</sup>

John Stokes, or his scribe, was apparently aware of the efficacy of a formal document, but not all testators were capable of making such a formal declaration. Intestacy could be avoided with very limited input on the part of the testator; a will might be construed in the physical acknowledgement of a testator in response to the questions posed by another. For example, a testator who had lost the power of speech

---

<sup>18</sup> Beds. C.R.O. ABP/R 2, p. 153d.

could gesture his approval or otherwise of suggestions put to him by the scribe regarding his intentions.<sup>19</sup>

A last will and testament might vary therefore, from a formal written document, setting out the testator's intentions and including the appointment of an executor, to an audible, witnessed expression of these intentions, which might or might not be written down in some form at the time of declaration.

It is frequently impossible to determine the original nature of the expression of the intentions of a testator from his or her will as it is recorded in the probate register. Clearly, a lengthy will which is concluded with the words 'written by my own hand', followed by the testator's name is likely to form a more faithful representation of the original expression than a brief will which provides no certain indication of the identity of the scribe. Even with the former, the exact form and wording of the will may have been altered by the clerk who copied the original will into the probate register.

### **The Association of Will-Making with the Last Confession**

Since the essence of a will was, apparently, the declaration of the testator's mind with regard to the disposition of some or all of his or her property after death, it is clear that wills and testaments were intimately involved with the law of succession.

The relationship of the will with the rules governing the succession of both personal and real property can be most clearly placed in context by reference to the original purpose of a last will and testament, and the development of that purpose into the form of will recognized in the early sixteenth century. The canonical will, with which this study is concerned, developed from the teaching of the early Christian

---

<sup>19</sup> Pollock and Maitland, The History..., vol. ii, p. 337.

Church that a dying man was bound to make atonement for his sins by devoting a portion of his worldly goods to the relief of the poor and to other pious purposes.<sup>20</sup> Thus, the will or testament began as a form of a charity, which was very closely associated with the last confession and which provided a constant motive for the right of bequest.<sup>21</sup> From the reign of Cnut, if not earlier, this association gave rise to the feeling that to die intestate was probably to die unconfessed and that, except in cases of sudden death, intestacy was disgraceful and posed a threat to the well-being of the intestate's soul.<sup>22</sup>

Although in theory, the Church's original influence over will-making was entirely a moral one, the close relationship between will-making and the receiving of the last rites must have ensured that the priesthood took an active and practical part in the hearing or recording of a dying individual's pious intentions.

### **The Development of Ecclesiastical Jurisdiction over Testaments**

Together with the moral teaching, which provided the basic impetus for will-making and the practical intervention, or at least the advice, of a priest at the declaration of a testament, there arose an assertion that the bishops should concern themselves with the fulfilment of these pious intentions, and the Church thus developed laws and institutions, administered by the church courts in England, which:

not only imposed a new notion of the will but also supervised it and saw to its enforcement.<sup>23</sup>

---

<sup>20</sup> T.F.T. Plucknett, A Concise History of Common Law, 5th edition, 1956, p. 735; Sheehan, The Will..., pp. 11-12, 16-17.

<sup>21</sup> Sheehan, *op. cit.*, p. 3.

<sup>22</sup> Holdsworth, A History..., vol. iii, p. 535.

<sup>23</sup> Sheehan, *op. cit.*, p. 3.

The history and development of the will is therefore an essential part of the history of the 'vast structure' of laws and institutions developed by the Church to enforce its teachings, and because of the right of bequest implicit in the making of a last will and testament, brought a part of that vast structure to bear on the law of succession.

Sheehan has suggested that, in many ways:

the history of the will in England is a supreme example of the part played by Christianity in the growth of western civilisation; it illustrates how the injection of a religious notion into a society was able to enrich and develop several secular institutions, while at the same time involving religious leaders in secular affairs until their activity was out of all proportion to the original purpose of the intervention.<sup>24</sup>

The development of the will and of the jurisdiction of the church courts over the implementation of bequests certainly helped to ensure that the law of succession became one of the most complicated of all the branches of English law, As Holdsworth observed:

In this, as in other branches of English law, the law courts ... developed a system of rules from a basis of primitive custom; but in this branch of the law these rules have been developed, not by one set of courts administering one set of principles, but by three sets of courts administering respectively the principles of the common law, of the Canon law, and the principles of equity; while the principles of equity were themselves a mixture of the principles of common law, of the canon law, of the discretion of the Chancellor, and, later of the practice of the court of Chancery as fixed by decided cases.<sup>25</sup>

The implications and influences of these different courts and branches of law, between which there were often very debatable frontiers, for the development and nature of the last will and testament, will be discussed throughout this study.

---

<sup>24</sup> Sheehan, The Will..., p. 3.

<sup>25</sup> Holdsworth, A History..., vol. iii, p. 534.

The rules and jurisdiction of these different courts and the debatable and moving frontiers which separated them, can be seen at work in the different rules which governed the succession to personal and real property. At all times (according to common lawyers), the jurisdiction of the church courts was limited to bequests of the personal goods of the testator. From at least the thirteenth century the devise of real property was impossible at (common) law, except where special customs, which allowed the devise of land, had survived. Even where such customs pertained, the Church was not, in theory, meant to have anything to do with the fulfilment of a will of land, and for example, some larger boroughs where the devise of burgage of land was allowed, developed their own registers in which the wills of such property were recorded.<sup>26</sup>

Where no such custom existed, real property was expected to follow the common law rule of primogeniture by which the landed estate passed entirely to the eldest son.<sup>27</sup> However, during the medieval period there developed a device known as the use, by which a landowner could circumvent the rules of common law and which made possible the devise of land. Uses were enacted first by nothing more than moral 'law' and pressure, and, later in the medieval period, came to be subject to the rules of equity and the jurisdiction of the courts of Chancery.

There is some evidence to suggest that the use may have brought the devise of land under the jurisdiction of the church courts, but this authority may have ceased at some time during the early fifteenth century.<sup>28</sup> As the Bedfordshire probate registers attest, however, wills of land were still being registered and recorded by the church

---

<sup>26</sup> Pollock and Maitland, The History ..., vol. ii, pp. 330-331.

<sup>27</sup> For a comprehensive survey of the rules relating to the succession of real property see Pollock and Maitland, *op. cit.*, vol. ii, pp. 171-184.

<sup>28</sup> See for example, A.W.B. Simpson, A History of the Land Law, 2nd edition, Oxford, 1986, p. 176, citing R.H. Helmholz, 'The Early Enforcement of Uses', Columbia Law Review, lxxx, 1979, 1503-1513; Pollock and Maitland, The History ..., vol. ii, p. 232.

courts in the early sixteenth century. It is possible that whatever the limitations of their practical jurisdiction, the church courts continued to record bequests of real property because they formed part of an individual's intentions as to what was to happen after his or her death.<sup>29</sup> The Church's concern with the fulfilment of these intentions may, however, have brought ecclesiastical influence to bear on the enforcement of every bequest contained in a will.

In his introduction to a volume of transcribed wills made by the inhabitants of late medieval Oxfordshire, J.R.H. Weaver has made the interesting assertion that wills of land were treated by the ecclesiastical courts as codicils which were:

proved along with the testament and the wishes and instructions embodied in them were enforced by the Court of Chancery.<sup>30</sup>

Unfortunately, no reference for the basis of this assertion is given but it does deserve some consideration. The use of the term *codicil* for a will of land would not always seem to have a precise application where the Bedfordshire wills are concerned, since a *codicil* was essentially an addition to a will (see the glossary of terms at the conclusion of this study) and bequests of land were sometimes interspersed with bequests of personalty. However, it can be argued that all bequests of real property were, in the eyes of the Church, subsidiary and additional to testamentary intentions.

The assertion that wills of land were 'proved' by the ecclesiastical courts also requires some consideration. Since the fundamental concern of the probate judge was to establish the testator's intentions, the establishing of the validity of a will was of paramount importance (see pages 93-94). Although any dispute over the implementation of instructions to feoffees contained in a last will would be heard in

---

<sup>29</sup> Helmholz, '... Enforcement of Uses', 1505-1508.

<sup>30</sup> A. Bearwood and J.R.H. Weaver (eds), Some Oxfordshire Wills Proved in the Prerogative Court of Canterbury, 1392-1510, Oxfordshire Record Society, vol. xxxix, 1958, p. 6.



the court of Chancery, it is entirely possible that the church courts, who enjoyed the benefit of swift access to the witnesses and executor of the will, were responsible for proving the validity of a will of land. Even if they did not enjoy powers of jurisdiction over *feoffees to uses* the church courts did have jurisdiction over the executor of a will, who may have had some involvement in the implementation of a bequest of real property and who might also have been appointed as a feoffee (see below, pages 155-157). The ecclesiastical courts may therefore have had some restricted powers of probate over a will of land. The matter of jurisdiction over the disposition of real property is clearly one of some complexity and will be referred to again, later in this thesis.

Paradoxically, the development of the use may have given individuals greater freedom over the disposition of their real property than that which they enjoyed over their personalty, despite the existence of very clear and rigid common law rules 'governing' the descent of land. Limitations on the disposal of personal property were imposed, not by the canon lawyers or their common law counterparts, but by the customary practice of *legitim* and in the case of *legitim* the 'debatable frontiers' are once again evident; in the fourteenth and fifteenth centuries, actions brought by widows and children, claiming their *legitim*, or reasonable part of their husband's or father's goods, were sometimes based on a writ which claimed that *legitim* was 'a common custom of the realm'. To this claim some lawyers took exception, arguing that a common custom of the realm must be common law and that 'matter of law should not be stated in such a way as to invite the plea 'no such custom'<sup>31</sup> The intricacies and interaction of the rules governing the descent of property were sometimes a matter of perplexity even for the lawyers.

*Legitim* (a term derived from 'legitimate part'), obtained throughout the province of York until 1692, and survived in some parts of the province of Canterbury

<sup>31</sup> Pollock and Maitland, *The History ...*, vol. ii, p. 351.

during the period under study.<sup>32</sup> (There is evidence to suggest that in Elizabeth's reign the courts of the southern province were no longer enforcing the old rule, except as a very exceptional local custom).<sup>33</sup> According to this rule, only a man who left neither a wife nor child could dispose of all his chattels as he wished. If he left a wife but no child (or offspring but no wife), his moveable goods, after his debts had been paid, had to be divided into two halves; one half constituted the 'dead's or 'soul's' half and could be disposed of by the testator as he wished, and the other half went to his wife or children. If the testator was survived by his wife and by offspring, his moveable goods (once his debts had been settled) would be divided into three parts, one for the soul, one for the wife and one for the children.<sup>34</sup>

There is some evidence in the Bedfordshire wills to suggest that the influence of this custom had not entirely died out in that county in the early sixteenth century and may have survived as a local custom. John Browne of Knotting, whose will was drawn up on the 11th of June 1504, asked that all his goods be divided into three equal parts of which one was to be kept to fulfil his testament; the second part was to go to his wife; and the third to his sons and daughters.<sup>35</sup>

And Robert Whyttesyde of Potton, who made his will on the 12th of November 1505, left to his wife all household 'stuffe' that she brought with her, and the residue of the household 'stuffe' was to be equally divided between his children when they came of age or married, and the testator declared that his wife was 'to be content with the thyrde part'.<sup>36</sup> The wording of Robert Whyttesyde's will, asking that his wife would

---

<sup>32</sup> Pollock and Maitland, *The History...*, vol. ii, p. 349.

<sup>33</sup> Pollock and Maitland, *op. cit.*, vol. ii, p. 353, n. 4.

<sup>34</sup> Swinburne, *...Testaments*, p. 191; Pollock and Maitland, *op. cit.*, vol. ii, pp. 348-356.

<sup>35</sup> Beds. C.R.O. ABP/R 1, p. 41d.

<sup>36</sup> Beds. C.R.O. ABP/R 1, p. 81.

'be content' may indicate that the rule of *legitim* was no longer rigidly imposed, but was still used as a 'rule of thumb' by some individuals, or their testamentary advisors, for the disposition of personalty.

That these wills were both made during the first decade of the sixteenth century may also suggest that the influence of *legitim* in Bedfordshire did not long survive the opening of the new century. This may help to explain the increasing length and detail of the Bedfordshire wills as the period under study progressed; while a custom persisted which dictated the provision to be made for a wife and children, a testator may have included only bequests of the 'soul's' part in his testament (and thus, wills which do not mention the separation of personal goods into two or three parts may still have been examples of *legitim* in practice). As the restraints on the disposition of property declined, wills would become more detailed and more 'worldly', in that provision for family members and instructions for the disposition of all, or a greater part of the testator's goods would be included.

The law affecting the succession to immoveable property may also have helped to determine the amount of realty to be mentioned in an individual's will. As has already been observed, common law forbade the devising of real property, but the development of the use diminished the importance of the common law rule, and, as will be observed on page 142, allowed a father the freedom to provide children other than the heir at common law with land. Thus, a will of land might only contain bequests of the real property which the testator did not intend to descend according to common law rules. Some, or even the greater portion of the testator's land, that which was not enfeoffed and not mentioned in the will, descended to the common law heir.

It has been suggested that the indivisibility of land at common law was due to the common lawyers' fear of ecclesiastical cupidity (since will making frequently took place during mortal illness, the influence of the priest and the desire of the testator to leave land to the Church in atonement for his or her sins might be very powerful).

Sheehan has observed that this assertion is based entirely on a disputed passage from Glanvill<sup>37</sup> and he suggests that the indivisibility of real property at common law 'can be explained in purely procedural terms; the common law did not recognize that land could be 'owned' or disposed of by a dead person, and since a will did not take effect until after the death of the testator, the disposition of land by this means was technically impossible.<sup>38</sup>

However, it would seem foolish to deny that in an age when the belief in purgatory may still have been strong<sup>39</sup> and an association between will-making and the last confession was still evident, a testator would be aware of the possible benefits of bequeathing real property to the Church. Those individuals who, at the time of making their will, were possessed of few savings or valuable items of personalty may have felt that they had little choice but to bequeath land, or the profits from land, to the Church for the sake of their soul. It is possible, if not probable, that the freedom over the disposition of immoveable property, which the device of the use allowed, was sometimes employed to bequeath land in a way that the testator considered to be beneficial to his or her soul.

The Bedfordshire wills indicate that real property could be used in a variety of ways by testators in order to benefit the Church and thus the health of their soul.<sup>40</sup> One hundred and ninety-five of the Bedfordshire testators used in this study (that is, 32 % of testators who made a bequest of land in some form) made a bequest of real property or of the profits of real property, to the Church. Of this group, the highest

<sup>37</sup> Sheehan, *The Will...*, pp. 270-273.

<sup>38</sup> Sheehan, *Ibid.*

<sup>39</sup> More than half of the Bedfordshire testators (54%) made specific bequests for masses and prayers to be said for their soul after their death. Concern for the welfare of the soul may also be indicated by those testators who ask that their will and testament will be faithfully enacted for the sake of their soul.

<sup>40</sup> The use of real property to fulfil pious bequests is discussed on page 190 of this study.

proportion (one hundred and twenty-one testators) made a charge upon land which was bequeathed to a beneficiary other than the Church, in order to finance the implementation and upkeep of specified masses and prayers to be said after their death. (Examples of bequests of land which were made conditional upon the upkeep of prayers for the soul of the testator have been cited in chapter seven of this study).

That the practice of using part (or sometimes all) of an individual's real property to finance masses and prayers after his or her death was an established and accepted one in Bedfordshire by the early sixteenth century is indicated by the wording of the will of John Skevington of Turvey (dated the 12th of June 1522). This testator declared that the house 'in the town', which he had 'bought of William Stephenson', together with its land and appurtenances, was to be 'called ordained and make myn obit house'. This property was to be given to the testator's wife for her life and she was to keep the 'yearly distribution'. After her death, the house and lands were to pass to the testator's executors to perform the same duty.<sup>41</sup>

A further twenty testators (12 %) asked that their real property would be sold and some or all of the resulting profit be given to the Church either after the death of the immediate beneficiary of the land, or as soon as the will was enacted. William Eton of Wilstead, for example, who made his will on the 16th of December 1521, declared that after his wife's death his house was to be sold 'that I may forleve it to the church ... the highways here and have a trentall said'.<sup>42</sup> For William Eton, it may not have been a case of a dying man making hurried provision for his soul and directing his most valuable resource to the Church under extreme circumstances, for

---

<sup>41</sup> Beds. C.R.O. ABP/R 2, p. 41. This testator's reference to the fact that the property concerned was recently purchased may have significance for the evaluation of the extent to which an individual's heirs were deprived of their inheritance. The bequeathing of purchased property away from the common law heir was apparently felt to be more generally acceptable than was the division of the main holding. See for example, Ralph Houlbrooke, The English Family, 1450-1700, 1984, p. 234 and below p. 187 of this study.

<sup>42</sup> Beds. C.R.O. ABP/R 2, p. 65d.

his will was not proved until the 2nd of December 1527. That this testator was not suffering from a possibly life-threatening illness at the time he drew up his will is suggested by the conditional nature of his bequest of his house and land to his wife for her lifetime 'except I have need to help myself with the same house'. William Warlow of Aspley, whose will is dated the 6th of July 1521, was not content to wait for the death of his wife to use his house to benefit his soul. He directed his executors to sell the house in which he lived to pay his debts and to cause two trentals to be sung.<sup>43</sup>

Thirty-one (15.7 %) of the Bedfordshire testators who directed land or the profits of land to the Church left some of the real property mentioned in their will to the Church, and two further testators bequeathed all the real property mentioned in their will in this way; again, either after the death of a beneficiary, or immediately after the testator's own death. Richard Colynge of Flitton, who made his will on the 28th of May 1503, left two and a half acres 'lying scattered in the South field of Flitton' to his wife for life, and then to the wardens and ministers of the church of St John (in Flitton) 'to be annexed forever to a certain tenement belonging to the church'.<sup>44</sup> John Slade of Blunham, the second testator who left all the real property mentioned in his will to the Church and whose will was drawn up on the 13th of December 1528, left his house 'abutting the Knoll' in Blunham, together with its land and appurtenances 'after the manner and custom of ancient Demayne to the parish church of Blunham' and directed that after his death the land was to be sold by the Church which was to use the resulting money 'without any altering ... of this present

<sup>43</sup> Beds. C.R.O. ABP/R 2, p. 99.

<sup>44</sup> Beds. C.R.O. ABP/R 1, p. 35d. Patricia Bell has suggested that Richard Colynge's gift may have provided a third of the nine acres, one rood of 'Flitton Lowne Land Lyng in Flitton and Swilsoe field', recorded in a terrier of 1636. In the following century the Revd Philip Burt made a memorandum that 'At Flitton there are five pounds a year (in rent for land) apply'd by the church wardens to the repairs of the church'. Patricia Bell (ed.), *Bedfordshire Wills, 1480-1519*, B.H.R.S., vol. xiv, 1966, pp. xi-xii, citing Beds C.R.O. P 12/3/1 and P 12/25.

will' to buy a cope to the value of twenty marks. A further fifteen acres of land was left by John Slade to his wife for life on condition that she kept an obit for him and caused the bell to be knolled 'on the morrow noon and even so long as she liveth' (the testator clearly believed that he was close to death and his will was indeed proved within a month of being made, on the 7th of January 1529). The testator declared that after his wife's death this property was to pass to the brotherhood of Blunham under the same conditions, and if the brotherhood failed to fulfil the specified conditions the land was to be divided between the Prior of St Neots and the Prior of Dunstable, so that the testator's soul would be prayed for perpetually.<sup>45</sup>

Since it is impossible to tell from the wills alone whether or not a testator is mentioning all, or only some of his or her real property in their will, or whether all the testator's family are named in the will (see below, chapter seven), it is difficult to establish whether and how often an heir at common law was deprived of some or all of his inheritance for the benefit of the Church and the testator's soul. The paucity of Bedfordshire wills, in the group under study, in which all the real property mentioned in the will was directed either immediately or ultimately to the Church, does indicate that few testators were prepared to entirely ignore the needs of those who came after them. Making adequate provision for their family was almost certainly considered by most testators as being efficacious for the health of their soul and by the period under study such provision may have been regarded as equally important as making direct gifts to the Church for the achievement of a 'good end'.

In 1530, a statute was passed which curtailed the freedom of individuals who wished to leave real property to some religious bodies. Gifts made for a period longer than twenty years, either for obits and the perpetual service of priests, or to churches, chapels and gilds 'erected or made of devotion' without corporation, were prohibited

---

<sup>45</sup> Beds. C.R.O. ABP/R 2, p. 192d.

by the new law.<sup>46</sup>

The statute, which formed part of the legislature's attempt to curtail the freedom of the individual over the disposition of real property, on the grounds that such freedom was injurious to the state<sup>47</sup> is reflected in the Bedfordshire wills. Outright gifts of land to the Church cease in the wills under study with that of Master William Westerdale, Bachelor of Canon Law and parson of the church of Eyeworth, which is dated the 18th of August 1530 and which includes the bequest of a 'mease' (messuage) to the fraternity of Biggleswade.<sup>48</sup> John Spencer of Pavenham who made his will on the 16th of January 1531, asked that his father-in-law's lands would be taken by the church of St Neots 'for the time being, to take issues and profits and keep repairs', while the residue of the profits were to be used for the good of specified souls. The testator declared that after twenty years (the maximum duration allowed under the new statute of 1530 for such a gift) these lands were to pass to his sister and her heirs.<sup>49</sup>

Thus, the Bedfordshire wills used in this study indicate that the bequeathing of real property or the profits from real property to the Church, or a religious body, was not unusual in that county in the early sixteenth century among those individuals who had sufficient resources to both make and register a will.

It is impossible to evaluate the deprivation caused by this practice to a testator's descendants and heirs, or to establish the existence or extent of 'ecclesiastical cupidity'. The wills under study show that such bequests were not necessarily made when a testator was *in extremis* and indicate that gifts of real

---

<sup>46</sup> 23 Hen. VIII, c. 10; Holdsworth, *A History ...*, vol. iv, pp. 443-444.

<sup>47</sup> Holdsworth, *op. cit.*, vol. iv, pp. 443-444, and see below, chapter six.

<sup>48</sup> Beds. C.R.O. ABP/R 3, p. 34d.

<sup>49</sup> Beds. C.R.O. ABP/R 3, p. 78.



property, or of profits from real property, were customary in at least some of the Bedfordshire parishes.

The law of succession, and the last will itself, were moulded and developed by a variety of sometimes conflicting interests, not only of the common and ecclesiastical lawyers, but also those of the populace who desired to maximize their freedom in the disposition of their own property, both real and personal, and to safeguard both their soul and the future prosperity of their family and their land.

A will could be the expression of an individual's spiritual and charitable intentions, to be enacted after his or her death. A last will and testament could also contain the testator's instructions for the disposition of some or all of his or her property, personal and (where the use was employed) real. This disposition of property was of utmost interest and importance to the testator's family<sup>50</sup> and provision for family members and other dependants formed a central (and perhaps increasingly prominent) theme in will-making.<sup>51</sup>

The increasing 'worldliness' of wills during the medieval period, due to the disappearance of restraints on the freedom to dispose of personalty (in the southern province), and the freedom to devise real property through the development of the device of the use, may not necessarily have meant that will-making became less 'religious' in intent. Rather, the spiritual motivation for will-making may simply have assumed a broader application as individual freedom in the disposal of property developed. The single aim of achieving a 'good end' came to encompass the new responsibilities which this freedom created. With this in mind, it can be argued that

---

<sup>50</sup> Plucknett has suggested that the law can be regarded 'as the expression of the family in terms of property'. *A Concise History* ..., p. 743.

<sup>51</sup> Although, as Sheehan has observed, 'Affection, the acquittal of special responsibilities, the desire to obtain protection for oneself and one's heirs' were also identifiable motives for making a 'post-obit' gift, before the canonical will had become established. *The Will* ..., p. 17.

the separation in terms of the law, and in the format of some wills of 'spiritual' bequests of personalty and bequests of realty should not obscure the fact that all the bequests contained in a last will and testament formed the sum of the testator's preparation for death.

## **CHAPTER THREE**

### **WILL-MAKING AND THE PROCESS OF PROBATE**

## The Circumstances in which a Will was Made

It is difficult to establish, using information derived from the wills under study, how strong the association between will-making and the last confession remained at the opening of the sixteenth century, or how far the freedom to devise real property through the development of the use, and the increasing freedom (in the southern province) to dispose of personal goods, had persuaded those individuals who enjoyed testamentary capacity to consider the disposal of their property after death, and to make a will while they enjoyed good health.

One hundred and forty-four (18.5 %) of the Bedfordshire testators declared at the beginning of their will that they were whole in mind and memory but 'sick in body', or made a more elaborate declaration of their ill-health.<sup>1</sup> And of the seven hundred and eighty wills and testaments used in this study, just over half (four hundred and thirty-one) were proved within three months of being made, while only fifty-eight (7.4 %) were proved more than a year after they were drawn up. Since a fairly high proportion (one hundred and ninety-eight, 25 %) of the wills in the registers under study give no indication of when they were proved both these figures must be regarded as a minimum, which does suggest that will-making was still frequently undertaken during mortal illness.

The revocability of wills and testaments<sup>2</sup> ensures that the interpretation of this evidence is problematic. Only seven of the Bedfordshire testators made a specific reference to previous wills, but an incalculable proportion of them may have made a will in health, or at a time of previous illness, which was superseded by the will recorded in the register. If both the former and the registered will were clearly dated

---

<sup>1</sup> See for example, the will of William Cobb of Sharnbrook, Beds. C.R.O. ABP/R 2, p. 3.

<sup>2</sup> Holdsworth has observed, 'That a will was at all times and under all circumstances revocable was clearly held by the ecclesiastical lawyers'. *A History ...*, vol. iii, p. 540.

(very few wills in the group under study omit the full date on which the will was made), a formal revocation would have been unnecessary. However, some testators felt it necessary to declare their former wills void, and to express their future right to revoke; Richard Fyssher of Potton who made his will on the 30th of March 1530, declared that:

Notwithstanding any other will maid before this present datt or shall be maid hereafter except it please almyghty god that hereafter I shall be better disposed to order it for the welth of my sooll and my wyffe.<sup>3</sup>

Since this will was proved within six months of being made, it is possible that Richard Fyssher was suffering from mortal illness when it was drawn up; the existence of former wills does not necessarily indicate that the association between will-making and the last confession had been weakened by the period under study, since any former wills may also have been made at a time of severe or life-threatening illness, although clearly not when the testator was *in extremis*.

There is, however, evidence in the Bedfordshire wills to suggest that some early sixteenth-century individuals were unwilling to leave the matter of will-making, and the disposition of their property, until the onset of illness. Edmund Conquest, a gentleman of Houghton Conquest, whose will is dated the 15th of June 1531, declared that:

According to the curse of humane natur I must needs change this transytory lyffe and know not how nor when. I therefor providing as far as in me lyes not to dye intestate orden and make and also declare this my present testament ...<sup>4</sup>

And William Elyot of Farndish, a man of possibly lesser means and leisure than Edmund Conquest, who made his will on the 5th of July 1529, noted simply in his

---

<sup>3</sup> Beds. C.R.O. ABP/R 3, p. 32.

<sup>4</sup> Beds. C.R.O. ABP/R 3, p. 57d.

will that he was 'yn clere mynd and in helthe'.<sup>5</sup>

Wills made in health may have been less rare than has been suggested by Dr Spufford<sup>6</sup> but the propensity to make a will in health may not have been equal throughout all sections of society. Swinburne observed that, at the time of writing his treatise, it was:

received for an opinion amongst the ruder and more ignorant people that if a man should chance to be so wise as to make his will in good health ... then that surely he should not live long after.<sup>7</sup>

The dread of intestacy may have remained strong during the period under study, and it is possible that the desire to make adequate and sensible provision for their family, prompted an increasing proportion of testators to make a formal and unhurried will, which may not have been possible once their health had failed. Thus, the feeling that will-making was almost a part of the religious ceremony performed at a death-bed may have been weakened, at least among the less superstitious members of society.

The practicalities of will-making may still, however, have been strongly influenced by the traditional association between will-making and the last confession, and may have been delineated by a flexible mixture (within certain parameters) of the circumstances of an individual testator and the demands of the ecclesiastical authorities.

### Who Wrote the Will?

It has been asserted that during the period under study very few people outside the

---

<sup>5</sup> Beds. C.R.O. ABP/R 3, p. 11d.

<sup>6</sup> Spufford, *Contrasting Communities* ..., p. 321.

<sup>7</sup> Swinburne, *Testaments* ..., p. 28.

ranks of the clergy wrote their own will.<sup>8</sup> This may have been due not only to the fact that writing was a skill acquired by relatively few laymen in the medieval period, but also because testators who were old or suffering may frequently have been unable to use the skills which, in health, they possessed.

Only one of the testators under study clearly wrote his own will and the wording of this will may indicate that the testator only wrote the will of land and not the testamentary section. William Conquest of Southill, who made his will on the 12th of August 1517, declared at the start of his *ultima voluntas* that his real property was to be held:

to the use and performing of my last will writen with myn owne hand.<sup>9</sup>

The bequests of real property follow the testamentary section of the will in which there is no similar declaration.

At the conclusion of six of the Bedfordshire wills the testator's 'signature' is recorded (in each case in what appears to be the handwriting of the scribe of the register will). The 'signatures' may indicate that these six testators were capable of signing their own name and that the probate clerk was expected to make a faithful representation of the original document.<sup>10</sup> In the wills of two of this group of testators (Thomas Awlaby of Dunstable and William Cokyn of Bury Hatley) the copy signature follows the words 'per me' which may indicate that the testator had written

<sup>8</sup> R.C. Richardson, 'Wills and Will-makers in the Sixteenth and Seventeenth Centuries: Some Lancashire Evidence', Local Population Studies, ix, 1972, 35.

<sup>9</sup> Beds. C.R.O. ABP/R 2, pp. 179-184.

<sup>10</sup> See the wills of Stephyn Hawton of Sandy, dated 20 September 1518, Beds. C.R.O. ABP/R 2, p. 141, John Stokes, clerk and parson of Wymington, dated 26 April 1520, Beds. C.R.O. ABP/R 2, p. 153d, Margaret Parcell of Riseley, dated 2 May 1512, Beds. C.R.O. ABP/R 2, p. 177d, John Spencer, a gentleman of Pavenham, dated 16 January 1531, Beds. C.R.O. ABP/R 3, pp. 78-80, Thomas Awlaby of Dunstable, will dated 26 May 1525, Beds. C.R.O. ABP/R 2, p. 76d and William Cokyn of Bury Hatley, dated 3 February 1527, Beds. C.R.O. ABP/R 2, p. 75d.

the original document. However, it is possible that these words simply reflect the testator's verbal authorship.<sup>11</sup>

There is evidence from elsewhere to suggest that would-be testators could call upon a variety of people to help them draw up their will. Spufford's study of three Cambridgeshire parishes found that in the sixteenth century:

for any village there will often be two or three scribes writing wills at any one time... They will range from the lord or lessee of the manor to the vicar, curate, church clerk or churchwarden, to the schoolmaster, a shopkeeper ... any ... literate yeoman or even husbandman.<sup>12</sup>

This may indicate that the laity were more involved in the writing of wills and testaments than some historians have allowed.

It has also been suggested that testators living in or near a county town could call in a public notary and wealthy town dwellers might employ their own scrivener. In Manchester, for example, Richardson was able to identify nine scriveners who were practising in the town from the late sixteenth century.<sup>13</sup>

There is evidence in the wills under study to indicate that the use of notaries for the drawing up of a will was not confined to the towns in the early sixteenth century. First in the list of witnesses following the will of Simon Basse of Sharnbrook, a rural parish in the north of the county (dated the 14th of May 1510), is 'master Wm. Pell, notary public'.<sup>14</sup> Neither Simon Basse's will, as it is recorded in

<sup>11</sup> For the use of wills in the study of literacy see David Cressy, Literacy and the Social Order, Cambridge, 1980, pp. 29, 105-108, 183, and R.A. Houston, Literacy in Early Modern European Culture and Education, 1500-1800, Cambridge, 1989, pp. 122-123, 146, 228.

<sup>12</sup> Spufford, Contrasting Communities, p. 333.

<sup>13</sup> Richardson, 'Wills and Will-makers ...', 36; see also D.C. Coleman, 'London Scriveners and the Estate Market in the Late Seventeenth Century', Economic History Review, iv, 1951-1952, 221-242.

<sup>14</sup> Beds. C.R.O. ABP/R 1, p. 173d.



the probate register, nor the other two Bedfordshire wills which include a notary in their list of witnesses (the will of Elizabeth Wynch, a widow of Luton, dated the 8th of November 1521, and Richard West of Bedford St Pauls, dated the 3rd of November 1525),<sup>15</sup> are set out in a significantly different form from the rest of the wills under study, which may indicate that the original will had been attested to, rather than written by, a notary – a practice which obviated the need for a copy will.<sup>16</sup>

It is generally accepted, however, that the close association between will-making and the last confession meant that the parish priest remained the most obvious choice of advisor (and therefore probably of scribe) in testamentary matters.<sup>17</sup> Four hundred and sixty-three (almost 60 %) of the Bedfordshire wills under study identify one or more of the witnesses to the will as a priest or clerk, or include the name with the title 'sir' but do not follow the name with the designation 'knight', indicating that the witness is in holy orders, which may support the view that the parish priest, or other cleric, was frequently chosen to be the scribe of a will.<sup>18</sup>

In only three wills, however, does the priest specifically declare his authorship. At the end of the testament of Thomas Carter of Beston in Northill (dated the 9th of November 1515), are the words 'written by the parish priest Ser John Lyn'

---

<sup>15</sup> Beds. C.R.O. ABP/R 2, p. 103 and ABP/R 2, p. 120 respectively.

<sup>16</sup> C.W. Foster, Lincoln Wills ii. 1505-1530, Lincoln Record Society, vol. x, 1918, p. xiv.

<sup>17</sup> Spufford, Contrasting Communities ..., p. 333.

<sup>18</sup> It is impossible to ascertain with any certainty, from the wills themselves, whether or not all those given the title 'sir' without the designation 'knight' are indeed clerics, but wills proved in the prerogative court of Canterbury do employ these different designations for clerical and knightly individuals. See for example, the will of Humphrey Catesby, knight, (no date given). P.C.C. PROB 11/14, fo. 23, p. 183 and the will of Sir Robert Wilde, parson of Wrestlingworth, made on 2 February 1502, P.C.C. PROB 11/13, fo. 22, p. 185. In the group of wills under study, William Cokyn of Bury Hatley names 'Sir Michael ffisher, knight' as a witness (Beds. C.R.O. ABP/R 2, p. 75d) and John Spencer of Pavenham names 'Sir Gylys Strangways, knight' as one of his feoffees (Beds. C.R.O. ABP/R 3, p. 78).

(Sir John's name does not appear in the list of witnesses).<sup>19</sup> Although this testator records that his separate will of land was written on the same day as his testament, no indication is given in the will as to the identity of the scribe. The parish priest's recording of his name at the end of the testament may simply reflect the fact that the Church had no official or administrative involvement (in theory at least) with a will of land but it is also possible that the *ultima voluntas* was written by someone other than the priest. The elaborate and formal wording of some of the wills of land used in this study may not, therefore, be attributable to the parish priest. Unfortunately, the use of registered rather than original wills precludes any firm conclusion being drawn on this point.

Bean has observed that, 'the testament and last will were not necessarily drawn up together', and that:

an examination of any probate records shows that periods of months, even years, might separate them.<sup>20</sup>

This view is borne out by the probate records under study. William Conquest of Southill, for example (see above, page 34), whose testament is dated the 12th of August 1517, records that his 'last will' was:

written with myn owne hand the xxth day of February in the yeare of the rainge of kyng Henry VIII. [In other words in the year 1517].<sup>21</sup>

Thus the will of land was drawn up six months before the testament.

---

<sup>19</sup> Beds. C.R.O. ABP/R 1, p. 210, Beds. C.R.O. ABP/R 3, p. 46 (the will of William Butt of Bedford, Our Lady, dated 5 July 1531) and Beds. C.R.O. ABP/R 3, p. 77, the will of John Warner of Bromham, dated 7 October 1532, which includes the declaration that 'this is my last will called to John Parson, vicar'.

<sup>20</sup> Bean, *... English Feudalism*, p. 149.

<sup>21</sup> Beds. C.R.O. ABP/R 2, pp. 179-184.

Some early sixteenth-century inhabitants of Bedfordshire may have been content to leave the making of their testament until the onset of mortal illness, but where circumstances were favourable, they attempted to ensure that the directions for the disposition of their real property were made in health, possibly because enfeoffment of land was not a process to be undertaken in sickness or haste unless circumstances dictated otherwise.

The recording of a separate will of land in the probate registers does not necessarily indicate that the will of land was made before the testament. Thomas Thody of Eton, who made his will on the 1st of December 1525, declared at the beginning of his separate will of land that the document was being drawn up on 'the day and yere aforesayd', that is, on the same day as his testament,<sup>22</sup> or that two different scribes were involved. It may however, be unwise to assume that the parish priest was always involved in will-making beyond matters testamentary.

Only fifty-seven (8 %) of the wills under study can be described as separate wills and testaments, either because there is a significant space left between the testament, which concludes with the appointment of executors (see below) and the first bequest of real property, or because the testator, before or after naming his executors (who occasionally appear at the end of a will of land), declared before the first bequest of land that 'this is the last will of me...'.

The distinction between the integrated will and testament and two separate documents is often a fine one, and it is impossible to assess from the wills, as they are recorded in the probate register, the degree of separateness of the original document or documents. William Conquest's will (see above), which was clearly made months before the testament, is recorded in the register as a single document with the testament ending and the last will beginning with a sentence:

---

<sup>22</sup> Beds. C.R.O. ABP/R 2, p. 51.

Item I bequeath to William Hamylden to be my supervisor iii s iv d and a swan/also I will that the sayd William Hamylden and Robert Stewkley the recefers of my lands and tenements do enter in to my sayd lands ...<sup>23</sup>

It is possible that the scribe of the testament copied out the will of land again to become part of a single document; it is also possible that the probate clerk did not bother to accurately record the documents as they appeared in their original form.

The majority (forty-one), of these separate wills and testaments occur in the first register. The decline in the use of Latin for wills (see below, page43-45) may have ensured that the separation between the testament and the last will simply became less obvious; the use of one language for all bequests was in itself an instrument of integration.

### **The Influence of Formularies**

The Church's horror of intestacy ensured that the formalities of will-making were kept to a minimum; there was little desire to reduce an individual to intestacy over a mere technicality of form. However, the Bedfordshire wills generally follow a very similar format, which reflects the fact that certain formalities were, ideally, to be observed in the recording of a will.

Since part of the function of a probate court was to pronounce on the validity of the will, a declaration of the testator's identity, parish and of his or her mental fitness were clearly important factors to be established and recorded in front of witnesses. All the Bedfordshire wills include evidence of the testator's identity and few omit the name of the testator's parish or a declaration that he or she is of 'good

---

<sup>23</sup> Beds. C.R.O. ABP/R 2, pp. 179-184. The 'slash' sign which occurs between the words 'swan' and 'also' in this quotation was a frequent (and sometimes the only) form of punctuation used in the group of wills under study.

memorie and hole mynd'.<sup>24</sup>

The identification of the required number of witnesses to the will was another element to be included in the setting out of the will if probate was to proceed smoothly (see below, page 84). Again, most of the Bedfordshire wills include a list of the names of at least the number of witnesses demanded by the probate court (see below, page 85). The absence of a list of the required number of witnesses in a few of the Bedfordshire wills reflects the fact that this 'formality' could sometimes be waived, in order that intestacy might be avoided.

Although no formularies for will-making have survived from Bedfordshire, formularies of the later medieval period from elsewhere indicate that despite a desire, on the part of the Church, to keep formularies to a minimum, the general form of a will and testament remained fairly uniform from one diocese to another and over many years, although changes and omissions might take place to reflect changing law or custom.<sup>25</sup>

The similarity of form of the Bedfordshire wills over the thirty-three year period under study, and their similarity to surviving formularies, indicates that an accepted form for the making of a will was generally observed throughout the medieval period. However, the presence of wills in the registers under study which do not entirely conform to the majority and which omit certain details which were

---

<sup>24</sup> Beds. C.R.O. ABP/R 1, p. 75d, the will of Elizabeth Mason of Renhold. The wording of this declaration could vary, Thomas Cyne of King's Houghton, for example, declared that he was 'with hoill and stodfast mynd', Beds. C.R.O. ABP/R 1, p. 61d.

<sup>25</sup> See, for example the two forms for the making of a will in the register of Daniel Rough, clerk of New Romney in Kent, one of which includes a form for the disposition of personal property under the rule of *legitim*, which had become obsolete in many parts of the southern province by the end of the medieval period. K.M.E. Murray (ed.), The Register of Daniel Rough, Common Clerk of New Romney, 1353-1380, Kent Records, vol. xvi, 1945, pp. 232-233.

theoretically necessary for probate, may indicate that deviation from the usual form could be acceptable to the ecclesiastical authorities. Formularies may therefore have been used essentially for guidance and were not necessarily prescriptive.

A late medieval will formulary which is recorded in the register of Daniel Rough, common clerk of New Romney in Kent (1353-1380) may be said to reflect the intricate interaction of the spiritual and the secular which characterized the canonical will. There are two forms for the making of a will recorded consecutively in the register: the first is brief and records only the necessity of the identification of the testator, their parish and of his or her soundness of mind. The second form is much longer and more detailed. In it, the formalities recorded in the first and fairly brief form are repeated, but this second form also includes a bequest of the soul to God:

In the first place I bequeath my soul to almighty God my creator.<sup>26</sup>

After observing the place of burial and the payment of mortuary and funeral fees, the formulary continues:

Note that in making a will two things must be chiefly considered: first, what debts he [the testator] has and what others owe him, and next, if he has a wife and family his goods must be divided into three, one part for the wife, one for the children and one for the testator to dispose of as he wills. If he has no children the division is between him and his wife.<sup>27</sup>

The form then observes 'In conclusion the executors are appointed thus' and then records the bequeathing of the residue of goods not specifically mentioned and the appointment of the executors is repeated 'with power to administer as is best for the soul of the testator etc'. It is not clear why two forms should be recorded in the register especially as the second repeats, and adds to, the content of the first.

---

<sup>26</sup> Murray, Register of Daniel Rough..., pp. 232-233.

<sup>27</sup> Murray, *Ibid.*; see above, chapter two.

The blandness of the bequest of the soul to God (the phraseology of which would be classified by some historians as a 'short-form' or 'semi-traditional' preamble; see below, page 48) is noteworthy, as is the emphasis on the settlement of material concerns and the proper division of personal goods (*legitim* was apparently still observed in New Romney in the later fourteenth century). It must be said that although the bequest of the soul to God is given precedence in the list of bequests, there is clearly an emphasis on the disposition of mundane property.

The scarcity of will formularies from the later medieval period<sup>28</sup> does not allow any general conclusions to be drawn on the nature of the content of such documents from the later medieval period in many areas. Since Daniel Rough was the common clerk of New Romney, and his register is not that of a bishop, the application of his formulary may have been very limited and other variants may have pertained in other localities. Daniel Rough's formulary does, however, reflect the legal formalities which were ideally to be observed in will-making (see above), which were generally to be observed throughout the province of Canterbury.

Some of the Bedfordshire wills may be said to be little more than formularies with the name of the testator, his parish and the date of the making of the will written in at the appropriate points. Even with the decline of the custom of *legitim*, the personal content of some wills and testaments may have been extremely brief, and in the case of very sick testators, almost non-existent.

Furthermore, the emphasis on the secular in this formulary, reflecting as it does, ecclesiastical law and custom, may provide a salutary indication of the degree of secularity to be encountered in an individual's last will and testament (encompassed as it may be within a central and ultimately spiritual aim of achieving a good end).

---

<sup>28</sup> Other varieties of ecclesiastical formularies do exist for the diocese of Lincoln; see K. Major, A Handlist of the Records of the Bishops of Lincoln and the Archdeacons of Lincoln & Stowe, Toronto, 1953.

This secular, or at least superficially, non-spiritual element of will-making may be of considerable significance for the evaluation of the contents of many bequests.

### **The Language of the Will**

By the early sixteenth century, the will could be written in either English or Latin. In some of the Bedfordshire wills the testament is written in Latin and the will of land in English. Even where the last will follows immediately from the testament and (at least as it is recorded in the register), is not a separate document, the language may change from Latin to English for the bequests of real property. Sometimes little more than the first sentence of the will is written in Latin and the main body of the testament is in English. In the will of James Prior of Barton in the Clay for example, the date and year in which the will was made are recorded in Latin and the rest of the combined will and testament is in English; and the will of Thomas Paulte of Wootton is separated into Latin for the testamentary bequests and English for the will of land, except for the residual clause, which although part of the testamentary section, is written in English.<sup>29</sup>

The use of Latin in will-making apparently declined in Bedfordshire as the period under study progressed. Almost half the wills in the first probate register, which records wills made between 1498 and 1526, are written wholly or partially in Latin. However, this is true of only seven (1.64 %) of the wills in the second and third registers, which may indicate that by the late 1520s there was a lack of ability to write more than formal Latin even among priests in the archdeaconry of Bedford.

The decline in the use of Latin for wills and testaments in early sixteenth-century Bedfordshire may be compared with Margaret Bowker's study of the examination of ordinands in the archdeaconries of Leicester, Stowe and Lincoln

<sup>29</sup> Beds. C.R.O. ABP/R 2, p. 41 and ABP/R 1, p. 72.



between 1520 and 1544. Bowker found that in these three archdeaconries, knowledge of Latin among the ordinands examined improved between 1520 and 1529 compared with the preceding and succeeding decades.<sup>30</sup> The evidence of the wills under study would seem to indicate (as Bowker herself observes), that there could be considerable differences, in this respect, between archdeaconries within a diocese. The Bedfordshire wills may also indicate the limitations of using the examination of ordinands as an indicator of functional Latinity among those who aspired to be clerics.

There may, however, have been other influences on the decline of Latin for wills and testaments during the period under study. The disappearance of the custom of *legitim* for example, may have allowed a less structured and more informal approach to the setting out of testamentary bequests (that is, beyond the essential ingredients of declaring the identity and fitness of mind of the testator and the date on which the will was written). The sections of the will in which the use of Latin persisted, in the group of wills under study, do coincide with these formal declarations.

In surviving medieval will-formularies the detailed setting out (in Latin) of the tri-partite division of personal property, which the custom of *legitim* involved, indicates that medieval will-formularies may have influenced the character of a high proportion of testaments. Once this custom, and therefore such formularies became obsolete, those involved in the making of a will may have turned to the language which was most frequently used by the testator, and those involved in the implementation of bequests. A Latin will may have posed considerable problems for those executors and supervisors who were not Latinate and have involved frequent recourse to, and consultation with, the parish priest or other clerics. Those who were

---

<sup>30</sup> M. Bowker, The Henrician Reformation: The Diocese of Lincoln under John Longland, 1521-1547, Cambridge, 1981, p. 129.

involved with the drawing up of wills and testaments may have found their task an easier one, once the recording of wills in English became more acceptable. It may, therefore, be unwise to draw firm conclusions about the Latinity of the priesthood in early sixteenth-century Bedfordshire, based purely on the decline of the use of Latin for will-making.

### The Form of the Will

In whichever tongue the will was written, the testament of charitable bequests normally took precedence over the will of land, although the testamentary element could be very brief; in the separate testament and *ultima voluntas* of Richard Robyns of Elstow for example (dated the 25th of January 1504), the 'testament' consists only of the customary bequest for the testator's mortuary payment (see below), 'For my principal as is customary'.<sup>31</sup>

There are exceptions; in the will of John Spencer a gentleman of Pavenham (dated the 16th of January 1531), the very detailed bequests of land come first.<sup>32</sup> This is not apparently an instance of a separate testament having been lost or never recorded in the probate register, as, towards the end of his will John Spencer included instructions for the burial of his body and the names of his executors, information which would normally be included in the testament. This will was written some twelve months before it was proved and it is possible that John Spencer made his will in health (and possibly wrote the will himself) and the usual format used by a priest or notary was not followed by him.

First the testator, or the scribe (all the Bedfordshire wills are written in the first

---

<sup>31</sup> Beds. C.R.O. ABP/R 1, p. 39d.

<sup>32</sup> Beds. C.R.O. ABP/R 3, pp. 78-80.

person) recorded the date on which the will was being written. The testator then declared his identity and, more rarely, his occupation or rank (see page 124) and the parish of which he or she was an inhabitant. Next came the declaration that the testator was in possession of his or her mental faculties and therefore fit to make a will. For example,

In der [sic] nomine amen the xxix day of October in the yere of our Lord God an cccc xxx [sic] I John Harding the elder in Aspley gyse being seke in my body and holl in my remembrans make my testament after this manner...<sup>33</sup>

### Preambles

The introductory section of the will was normally followed by the dedication of the testator's soul to God. For example:

furst I bequeth my soull to almyghty got to our laydye saint Mary and to all the company of heven.<sup>34</sup>

This bequest is usually referred to by historians as the 'preamble', a title which perhaps suggests that the bequest of the soul was a formality to be observed before the start of the serious and more personal aspects of will-making. It must be said, however, that the pre-eminence of the bequest of the soul over bequests of personalty and realty was a declaration of the precedence of the soul over earthly considerations and encapsulated the essentially spiritual purpose of will-making, that of achieving a 'good end', which was in turn part of an individual's preparation for the soul's passage to Heaven.

---

<sup>33</sup> Beds, C.R.O. ABP/R 2, p. 35.

<sup>34</sup> Beds. C.R.O. ABP/R 1, p. 184, the will of Matthew Smyth of Shillington, dated 13 June 1525.

Notwithstanding the title of 'preamble' with its overtones of impersonal formality, the bequest of the soul has attracted the attention of some historians as a possible indicator of the religious beliefs of the testator. It is now generally accepted that the major drawback of using preambles as indicators of religious belief is that it is frequently impossible to establish whether the wording of the bequest of the soul reflects the beliefs of the testator or those of his testamentary advisor or scribe. As Michael Zell observed in 1974, historians studying preambles as indicators of religious belief:

may be facing a similar problem as that which historians of medieval heresy face when they attempt to derive an individual's belief from the conventualised formulae of church court documents.<sup>35</sup>

That the beliefs which are apparently expressed in a 'preamble' do not always admit of straightforward interpretation is indicated by the existence of wills in which, for example, a 'protestant' preamble is followed by bequests for masses and prayers to be said for the testator's soul.<sup>36</sup>

Despite these cautionary observations, historians are still attempting to use the bequest of the soul to God as an indicator of religious belief. Although most historians seeking to use preambles for this purpose acknowledge the difficulties of evaluating the beliefs of an individual testator, the acknowledgement is sometimes of a perfunctory nature and apparently does not always influence the historian's interpretation of the evidence. The use of preambles for this purpose may thus represent a prominent example of historians 'inadvisedly pressing wills into historical service', partly, if not wholly, because they exist in such large quantities for the years of significant religious change, and are too plentiful to be ignored.

---

<sup>35</sup> Michael Zell, 'Church and Gentry in Reformation Kent, 1533-1553', Unpublished University of California Ph.D. Thesis, 1974, p. 379.

<sup>36</sup> Zell, *Ibid.*

In her recent study of Reformation London, Susan Brigden has acknowledged the doubts over the use of preambles expressed by Dickens and Zell but suggests that individuals may have expressed 'their private hopes for salvation and their fears for damnation' in their last will and testament because 'as death approached there were compelling reasons also to tell the truth'.<sup>37</sup> The major flaw in this argument is that an individual approaching death may have required considerable help in the drawing up of the document and thus, the influence on the wording and content of bequests by a scribe or advisor may have been greater than that involved in the making of a will by a healthy man or woman. Furthermore, the views expressed by a dying testator may indeed, as Dickens observed more than thirty years ago, have borne little relation to the beliefs held by that testator during his or her lifetime.<sup>38</sup> The 'truth' of the beliefs expressed in a bequest of the soul to God is not as straightforward or simple as Brigden apparently wishes to believe.

This is not to deny that the preambles of wills may have some value as indicators of the existence of, for example, protestant beliefs in a locality at a given time, but it must surely be accepted by historians that the source of the views expressed in a will may be confined to an individual testator or scribe, or have been dictated, or at least influenced, by diocesan authorities and the existence of a prescriptive or advisory formulary.

None of the Bedfordshire wills used in this study contain any overtly protestant sentiments, since all the bequests of the soul to God are either examples of the 'short-form' or 'semi-traditional' bequest of the soul simply to God, or of the 'traditional catholic' formula in which the intercession of the Virgin Mary and the saints on behalf of the testator's soul is envisaged.<sup>39</sup> As Brigden has rightly observed,

---

<sup>37</sup> Susan Brigden, London and the Reformation, Oxford, 1989, p. 29.

<sup>38</sup> Dickens, Lollards ..., pp. 171-172.

<sup>39</sup> These categories are outlined by Zell, 'Church and Gentry ...', pp. 376-377,

no absolute distinction between 'catholic' and 'protestant' bequests of the soul can ever be subtle enough for the historian to establish beyond doubt the implications of the expression. For, as Brigden has noted:

every catholic insisted upon the saving power of Christ ... [and] long before Luther's theology of grace could have been influential wills exist which show that not everyone was convinced of the doctrine of salvation by works<sup>40</sup>.

Certainly, the neutrality of the 'short-form' bequest of the soul to God cannot be used to establish doctrinal inclinations, although some historians have felt it necessary to treat such bequests with a certain degree of ambiguity. In his categorization and analysis of the preambles of wills made by inhabitants of Reformation York, David Palliser observed that:

The 'neutral' bequests of the soul to God have been counted as non-traditional ... but some [testators] employing this formula were certainly Catholics<sup>41</sup>.

Reference to a pre-reformation will-formulary such as that noted on page 41 of this study may reassure the historian that this type of bequest was not simply used by individuals of bland religious persuasion, but had apparently been formulated by the Church itself. The description of these 'short-form' bequests as 'non-traditional' would therefore seem to be inappropriate and illustrative of the distortion which may result from the historian's imposition of what he or she considers to be 'traditional' or 'non-traditional' upon the analysis of a document. If will-formularies had survived from the medieval period in greater numbers a clearer picture of the 'traditional' and standard qualities of this 'short-form' bequest of the soul simply to God might be

---

and see Dickens, Lollards..., p. 172.

<sup>40</sup> Brigden, London and the Reformation, p. 380.

<sup>41</sup> D.M. Palliser, The Reformation in York, Borthwick Papers, No. 40, York, 1971, p. 28.

attainable. As it is, the existence of this type of preamble in even a single formulary does suggest that mention of the Virgin Mary and the saints was not necessarily a traditional or regular requirement of those who governed wills and will-making in the later medieval period. An incalculable proportion of such bequests may be indicative of a lack of participation in the drawing up of the will by the testator (and the scribe and a customary formulary therefore described much of the document), and does not necessarily reflect the testator's religious beliefs.

Spufford has suggested that a study of all surviving wills from a particular parish may be more revealing than taking a cross-section of wills proved in any year or years because each parish had its own scribes and its own set forms, and thus, the expression peculiar to that parish can be identified, as can 'those individuals whose beliefs were too strong to be expressed within the common framework.'<sup>42</sup>

Dr Spufford's emphasis on the influence of the scribe and of the strength of the religious feeling of the testator may, however, ignore other determinants of the form of the preamble. Using the wills under study, a close examination of the well-represented parish of Wootton indicates that factors affecting the form of the bequest of the soul to God may have been mundane as well as pious. The distribution of wills made by Wootton testators, spread over the period under study but with a nucleus of wills made in a twelve month period, provides promising ground for research.

Four of the sixteen wills from this parish were made in the year 1505. Of these, one (that of Thomas Paulle) omits the bequest of the soul to God entirely.<sup>43</sup> Two of this group, wills made by Thomas and Joan Francis, who may have been husband and wife and who made their wills within eight months of each other,<sup>44</sup>

<sup>42</sup> Spufford, Contrasting Communities ..., p. 335, n. 35.

<sup>43</sup> Beds, C.R.O. ABP/R 1, p. 72, dated 15 November 1505.

<sup>44</sup> Beds. C.R.O. ABP/R 1, p. 88, dated 11 February 1505 and 5 October 1505 respectively.

contain an almost identical bequest of the soul. The fourth, in common with the wills of Thomas and Joan Francis, envisages the intercession of the Virgin Mary but uses slightly different wording and includes the phrase 'the holy company of Heaven'.<sup>45</sup>

In every will (apart from that of Thomas Paulle) the intercession of the Virgin Mary and the Saints on behalf of the testator's soul is envisaged. Since the Wootton wills were made over a twenty-eight year period (1505 to 1533) some variation would be expected (six different clerics are mentioned by testators over the sixteen year period) but the lack of a 'semi-traditional' bequest may indicate that an accepted form did operate within the parish, although as has already been observed, both a traditional and a short-form traditional bequest could occur in the same parish in the same year, indicating that an accepted form did not always override other considerations or circumstances.

Of the clerics named in these sixteen wills, the name of Thomas Hayward, curate of the parish, occurs most often, in three wills dating from 1513, 1517 and 1518, and the bequest of the soul to God is very similar in each will. John Elyce who made his will on the 15th of June 1513, bequeathed his soul to:

almighty god to his blessed mother saint Mary and to all the Holy compnay [sic] of Heaven.<sup>46</sup>

Nicholas Wooleydy, whose will is dated the 9th of April 1517, left his soul to:

almighty god his blessed mother our lady saint Mary and all the holy company of Heaven.<sup>47</sup>

And Richard Bechner, whose will was drawn up on the 22nd of May 1518, entrusted

---

<sup>45</sup> Beds. C.R.O. ABP/R 1, p. 101d, the will of John Gedding, dated 12 October 1505.

<sup>46</sup> Beds. C.R.O. ABP/R 1, p. 137.

<sup>47</sup> Beds. C.R.O. ABP/R 2, p. 46.



his soul to:

almighty God, his moder Mary and all the company of Heaven.<sup>48</sup>

There are other similarities between these wills. For example, the wills of both Nicholas Wooley and Richard Bechner include the phrase 'Sir Thomas Hayward my curate' in the list of witnesses, which may be further evidence of a common scribe. Small differences of spelling (of, for example, the word 'mother') in these three wills may be a result of careless copying by the scribe of the probate register, or indicate that Thomas Hayward's spelling was not standardized (his own name is spelt in three different ways in the three wills). These wills may, however, indicate that a scribe or advisor might have considerable influence over the wording of the bequest of the soul.

The only other cleric to be mentioned more than once in the Wootton wills is Sir Thomas Maltbe, who is listed as a witness in the will of Thomas Paulle (whose will does not include a bequest of the soul to God) and in that of Thomas Francis.

The bequest of the soul of one of the Wootton testator's stands out from the others of that parish, although it can be categorized, like the others, as representing the traditional catholic formula. Bartholomew Manerd, who made his will on the 25th of November 1531, bequeathed his soul to:

the infynyt mercy of god and to the merytts of his bitter passion and to the intercession and merytes of that most Blessed Virgin Saint Mary his mother and all the Company of Haeven.<sup>49</sup>

Thus, although this testator is expressing the same beliefs as his fellow testators from Wootton, his bequest of the soul is more elaborate and idiosyncratic.

---

<sup>48</sup> Beds. C.R.O. ABP/R 2, p. 243d.

<sup>49</sup> Beds. C.R.O. ABP/R 3, pp. 72d-75d.

Is there any other evidence contained in the will to indicate the reason for this difference? First, it must be said that Bartholomew Manerd's bequest of the soul ' might be regarded as a 'mixed' preamble, in which the mention of the 'merytts of' Christ's bitter passion' may be interpreted as evidence of protestant ideology on the part of the testator, or someone involved in the making of the will. Preambles which express these sentiments and which are accompanied by the traditional catholic view of the need for the intercession of the virgin and the saints are evident from this period in other groups of wills.<sup>50</sup>

Another of the Wootton wills, that of John Wellys, made in the same year as that of Bartholomew Manerd, and which also includes the name of Thomas 'Fooks' or 'Fox' in the list of witnesses, includes a less elaborate form of the bequest of the soul which conforms with the other wills from the parish:

to almyghty god to his blessed mother saint Mary and all the company of Heaven.<sup>51</sup>

This may indicate that Bartholomew Manerd belongs to the category described by Dr Spufford as being an individual whose beliefs were too strong to be expressed in the common framework.

However, there is another way of looking at Bartholomew Manerd's bequest of the soul. As has already been observed, an insistence upon the saving power of Christ may itself be interpreted as a catholic view and may not look forward to protestant ideology. If Bartholomew Manerd's beliefs did not materially differ from those of his fellow testators, why does his bequest differ so markedly from theirs? The first possibility is that this testator wrote the will himself (there is no indication of the identity of the scribe in the will as it is recorded in the register) and did not follow

---

<sup>50</sup> Zell, 'Church and Gentry ...', p. 379.

<sup>51</sup> Beds. C.R.O. ABP/R 3, p. 48d.

the set formula of the parish. A second possibility is that the testator enjoyed greater prosperity than his fellow testators from Wootton and could simply afford to make, or cause to be made, a more elaborate will. Although Bartholomew Manerd does not seem to be of gentle or noble status (he asks for his body to be buried in the parish churchyard), his will does cover five pages of the register (and is far longer than the other Wootton wills), showing that he felt able to both make and prove a lengthy will.

Prosperity was not the only determinant of the length of a will, however; the state of the testator's health might also be influential. Since Bartholomew Manerd's will was not proved until more than a year after it was made, it is possible that he made his will while he enjoyed reasonable health (although of course he may have died long before the will was proved). Thus, the nature of Bartholomew Manerd's preamble may be due not only to his religious beliefs but also to the possibly leisured circumstances in which his will was made.

The source of, and motivation for, a bequest of the soul to God may, therefore, be extremely difficult to identify and the form of the bequest may be dependant upon a variety of different factors, including the health and prosperity of the testator, the existence of an accepted form within a parish or archdeaconry and the religious beliefs of those involved in the making of the will. Historians have perhaps concentrated too much on the spiritual determinants of the wording of what was, after all, a spiritual bequest. When a preamble is evaluated in the context of the character of the entire will (and not merely in relation to other pious bequests) other, mundane, determinants may be indicated.

### **The Body**

The bequest of the soul was usually followed by the testator's directions for the disposal of his or her earthly remains. For the majority of testators this was a simple

request to be buried within their parish churchyard. In the case of prosperous or clerical testators, these directions could be both detailed and elaborate, and usually envisaged burial within the body of the church. Sir William Gold, a priest of Bedford who made his will on the 10th of May 1516, declared that his body was to be:

buried in Powls Church of Bedford betwene the Chapel of Corpus Christi and the Chapel of Saint John Baptyst, there or elsewhere it shall please myn executors be there discrecion.<sup>52</sup>

Phillipe Ariés has noted an absence of the 'physical horror of death' in European wills of the early modern period and observes that 'the death portrayed in wills has related to the peaceful conception of death in bed'. This led Ariés to conclude that the horror of physical death 'was absent from the common mentality' at this time.<sup>53</sup> The Bedfordshire wills are indeed almost devoid of details or forebodings of physical death but Ariés' assumption that this is necessarily an indication of the testator's attitude to death is surely erroneous and based on a lack of understanding of the nature and function of a last will and testament. A will was concerned with what would happen after death, to the testator's soul, body and earthly possessions. Declarations concerning the ill-health of the testator were an acknowledgement of the need to make a will and testament and to ensure that the wishes of the individual would be enacted after their death.<sup>54</sup>

Where fear of death is expressed in the Bedfordshire wills, the basis of the fear

---

52 Beds. C.R.O. ABP/R 1, p. 52; F.G. Emmison has noted that 'by custom, internment inside the church or chancel was allowed where the deceased person belonged to a leading family ... by ancient prescription the privilege of burial inside the building had become attached to many manors and substantial houses'. Elizabethan Life: Morals and the Church Courts, Chelmsford, 1973, p. 170.

53 Phillipe Ariés, Western Attitudes to Death from the Middle Ages to the Present, 1974, pp. 40-41.

54 Brigden has found that Tudor Londoners also spoke of 'mortal mutability and frailty and wrote of man's mortal plight' in their wills. London and the Reformation, p. 29.

would seem to be that of dying 'unprepared'. William Cobb of Sharnbrook, for example, who made his will on the 14th of October 1522, declared that he was:

sick in body [and] dredyng the perell of death to fall unto me ... make this my present testament...<sup>55</sup> (And see the wording of the will of Edmund Conquest quoted on page 32 of this study).

Such declarations can surely be classified as 'forebodings' of death and an awareness of the need to prepare for that eventuality. Descriptions of the 'physical horror' of death would clearly have been superfluous in this context.

## Mortuary

Next came the charitable bequests, which normally began with those of a formal or customary nature, the first of which was frequently the 'bequest' (and it is more of an acknowledgement of the inevitable) of the testator's best beast or other goods for his or her 'mortuary' or 'principal'.<sup>56</sup> The language used for this duty was often of a perfunctory nature; 'for principal as it requireth by custom used and occupied'.<sup>57</sup> However, the clergy, perhaps unsurprisingly, were willing to be a little more gracious about their mortuary payment than their lay counterparts. John Mytton, a clerk of Tempsford, who made his will on the 11th of April 1507, left for his mortuary, 'the best thyng to me perteynyng throwgh the good of god'.<sup>58</sup>

The payment of mortuary was not demanded by law but could (as was

---

<sup>55</sup> Beds. C.R.O. ABP/R 2, p. 3.

<sup>56</sup> Both terms refer to the gift or offering due to the incumbent of a parish from the estate of a deceased parishioner. Maitland observed that 'both Glanvill and Bracton have protested that neither heriot nor corspresent [mortuary] is demanded by law, though custom may exact it'. *The History* ..., vol. ii, p. 338.

<sup>57</sup> Beds. C.R.O. ABP/R 1, p. 34.

<sup>58</sup> Beds. C.R.O. ABP/R 1, p. 199.

apparently the case in some of the Bedfordshire parishes) be exacted by custom.<sup>59</sup>

John Frant of Colmworth, whose will was drawn up on the 1st of August 1529, declared his motivation for making a mortuary payment:

I bequeath for my mortuary after the custom of the cuntre in redemption of my grevys offenseys to god ward.<sup>60</sup>

(Although these words may be those of the scribe of the will, or have been influenced by a formulary.)

The law relating to mortuary payments changed during the period under study; the Mortuary Act of 1529 laid down a scale of maximum payments related to the value of the deceased's moveable goods, and no mortuary was henceforward to be paid out of the estate of individuals whose personal goods were worth less than ten marks. Mortuaries were to be paid according to the following scale:

Where the value of the chattels of the deceased after payment of debts is:

i.	from 10 to 29 marks	3s. 4d.
ii.	from 30 to 39 marks	6s. 8d.
iii.	40 marks or over	10s. 0d.

provided 'that in places where mortuaries had hitherto been accustomed to be paid of less value than aforesaid, no person would be compelled to pay more than was customary'.<sup>61</sup>

This change of law is reflected in the Bedfordshire wills. John Masters of Gravenhurst, who made his will on the 6th of June 1531, declared 'Item to my

---

<sup>59</sup> Pollock and Maitland, The History ..., vol. ii, p. 338.

<sup>60</sup> Beds. C.R.O. ABP/R 3, p. 13d.

<sup>61</sup> 21 Hen. VII, c.6; Foster, Lincoln Wills, ii, p. xxiii.

mortuary according to the act of parlement<sup>62</sup> and William Milward of Pulloxhill, whose will is dated the 8th of November 1531, declared 'I gave to the vicar of Pulloxhill for the discharge of my mortuary as the law ys now vi s viii d',<sup>63</sup> which suggests that testators or their scribes and testamentary advisors did keep abreast of at least some aspects of the law relating to the document which they were making.

It is, however, difficult to tell from the registers under study, how rigorously and accurately this new law was applied. George Acworth of Toddington, whose will is dated the 31st of May 1530, and who is apparently a prosperous man (he bequeaths items of gold and silver, and furred gowns, and asks that his body will be buried in the church of Luton, 'nye unto the sepultur of my father' which does suggest both wealth and standing in the community) but no reference is made to a mortuary payment.<sup>64</sup> Since it seems probable that George Acworth's estate was worth more than ten marks (a single bequest to the testator's daughter was worth three pounds, six shilling and eight pence), it may be concluded that the scribe of the will or the probate clerk did not think it necessary, or had omitted, to enter a reference to the mortuary payment in either the will or the register.

The absence of any references to the payment of mortuary in the other wills made by inhabitants of Toddington may indicate that this parish (which may have enjoyed borough status) was exempt from this duty. However, it is also possible that the recording of a mortuary payment in a last will and testament was not customary in

---

<sup>62</sup> Beds. C.R.O. ABP/R 3, p. 44d.

<sup>63</sup> Beds. C.R.O. ABP/R 3, p. 49.

<sup>64</sup> Beds. C.R.O. ABP/R 3, p. 28; Joyce Godber has noted that although the fifteenth-century court rolls of Toddington use the expressions 'burgh' and 'outside the burgh', they 'appear to show only a large village'. *A History of Bedfordshire*, Luton, 1969, p. 162; that mortuary payments were not always demanded by custom in the boroughs is indicated by the lack of reference to mortuary in the wills used in this study, made by inhabitants of Bedford and Luton (which were indisputedly boroughs).

Toddington, even in instances where this duty was to be exacted. It may therefore be foolish to attach too much importance to the presence or absence of a reference to a mortuary payment when attempting to establish the wealth or poverty of the will-making population (see page 127-128).

### Charitable Bequests

Pious and charitable bequests (that is, those which were made with the intention of promoting the welfare of the testator's and other specified souls), are both abundant and varied in the group of wills under study. They encompass the more obviously pious bequests of personalty (and sometimes of real property) for prayers and masses to be said for the soul of the deceased, together with 'deeds of alms and charity', by which the testator sought to speed his or her soul through the torments of purgatory. Bequests for masses and prayers were frequently made for the benefit of the souls of those whom the testator 'was bound to pray for', such as a spouse or parents, while 'good works' were normally instigated by the testator for the health of his own soul.<sup>65</sup>

The first pious bequest made by many of the Bedfordshire testators was one made in recompense for unpaid tithes. John Huckell of Henlow for example, who made his will on the 16th of May 1529, declared, 'Item I bequethe to the hy autor of Henlow for forgotten tythys iiii d'.<sup>66</sup> These bequests for forgotten tithes can be said to reflect the complex relationship between the spiritual and the secular which influenced the character of the canonical will. On a mundane level, unpaid tithes were a debt to the incumbent of the parish which had to be settled upon death.<sup>67</sup> That

<sup>65</sup> Clive Burgess, 'A Fond Thing Vainly Invented: Purgatory and Pious Motive in Later Medieval England' in S. Wright (ed.), Parish, Church and People, 1988, pp. 56-84, describes the sacrament of penance and outlines its effect and influence in the later medieval period.

<sup>66</sup> Beds. C.R.O. ABP/R 3, p. 10.

<sup>67</sup> Holdsworth, A History..., vol. ii, p. 476.



such a bequest was not normally subsumed in the general request made by many testators that their debts would be paid by their executors, or feoffees (see below), and either leads, or is recorded near to the beginning of a testator's list of pious and charitable bequests, indicates more clearly the spiritual and pious element of settling a debt owed to the Church.

Following the bequest for forgotten tithes and a bequest to the diocesan (or 'mother') church of Lincoln, the pious bequests in the wills under study revert to a more individual and parochial character and range from the fairly brief:

Item I bequeth to the ii tapers of the ii candelstecks that stande before the chancell dore ii pond of Wexe; also I bequeth to the bellis xxd,<sup>68</sup>

to the very lengthy:

To the rood light and to Our Lady light i bushel of malt each; to Our Lady of Pity, St Thomas and St Anne iid; to 'Kyng Harry' id; to St Sondag iid; to St Nicholas and St Clements lights iid; to the light of St Katherine, St Margaret and Mary Magdalen iid; to St Martin and St William light iid; to the lights of St Michael and St Anthony iid; to St Christopher light id; to St John and St 'Sythe' lights iid; to the friars of Dunstable to pray [for the testator] ii bushels of malt; to Tilsworth church i bushel of malt.<sup>69</sup>

Bequests for deeds of alms and charity were sometimes of a very mundane application. Thomas Hygman of Potton for example, whose will is dated the 12th of December 1504, left 6s. 8d. for repairs to Arrington Causeway 'where ys most nedful'<sup>70</sup> and John Mytton, a clerk of Tempsford, whose will has been quoted in page 56 of this study, also left 6s. 8d. 'to the Hyghways where nede aperthus most within

---

<sup>68</sup> Beds. C.R.O. ABP/R 3, p. 38d, the will of Thomas Bruse of Luton dated the 29th of November 1530.

<sup>69</sup> Beds. C.R.O. ABP/R 1, p. 81d, the will of Richard Webbe of Houghton Regis, dated the 5th of May 1506.

<sup>70</sup> Beds. C.R.O. ABP/R 1, p. 10.

the precincts of Temysford Pownds'.<sup>71</sup> That the mending of highways could vie with the Church as an acceptable deed of charity is indicated by the will of Robert Whyghtsyde of Potton, which was drawn up on the 12th of November 1505. At the conclusion of his testament this testator bequeathed the residue of his goods to be disposed of, 'where it most necessarie as to the church hie ways or othys'.<sup>72</sup>

Education might also benefit from a charitable bequest. Sir William Newton, clerk and chaplain of the guild or fraternity of St John the Baptist of Dunstable, for example, whose will was drawn up on the 8th of August 1500, left 'to each poor scholar 1d.'<sup>73</sup> and John Joy of Renhold left six marks:

so that a priest be disposed and continew his study and lernyng at the universitie of Cambridge ther to syng ... iii parts of the year for my soul [and other specified souls].<sup>74</sup>

The abundant and varied nature of the pious bequests which are included in the Bedfordshire wills is also to be found in late medieval and early modern wills from elsewhere, and these have proved to be a tempting source of information for historians wishing to chart the character and development of urban and rural piety. To give but two examples; R. Whiting has used wills in conjunction with other contemporary documents, to investigate the progress and impact of the Henrician and Edwardian Reformations upon prayers for the dead in the south-west of England. And, using the evidence provided by wills made by the inhabitants of late medieval Hull, Peter Heath has attempted to evaluate the character of urban piety in a Northern

---

<sup>71</sup> Beds. C.R.O. ABP/R 1, p. 199.

<sup>72</sup> Beds. C.R.O. ABP/R 1, p. 81; see also, N.P. Tanner, The Church in Late Medieval Norwich, 1370-1532, Toronto, 1984, pp. 137-138, and J.A.F. Thompson, 'Piety and Charity in late Medieval London', Journal of Ecclesiastical History, xvi, 1965, 187-188.

<sup>73</sup> Beds. C.R.O. ABP/R 1, p. 20d.

<sup>74</sup> Beds. C.R.O. ABP/R 2, p. 175d.

town – an exercise which led him to suggest that faith and pious practice in that particular location was ‘insular, inert, and shallow, untouched by the new devotions, perfunctory almost in the old ones’.<sup>75</sup>

Recently however, doubts have been expressed about the utility of testamentary evidence for the study of pious intentions, particularly where other contemporary evidence, which might allow a more contextual approach to the subject, is lacking. Burgess has noted the observation of R.B. Dobson on the number of scholars:

currently embarked upon the fascinating if often frustrating attempt to recapture late medieval religious priorities and sensibilities by means of probate registers.<sup>76</sup>

In an article which may presage a more enlightened but perhaps over-restrictive approach to the study of testamentary evidence, Dr Burgess has suggested that the character and extent of these ‘frustrations’ indicates not only that broad generalization from will-analysis is hazardous, but also that:

hoping for a reliable impression even of one testator’s plans from a scrutiny of his or her will, is folly.<sup>77</sup>

Some of the factors cited by Burgess to support his contentions have already been applied to the questionable utility of preambles as indicators of individual belief;

---

<sup>75</sup> R. Whiting, ‘For the Health of my Soul; Prayers for the Dead in the Tudor South-West’, *Southern History*, 1984, iii, 68-94; P. Heath, ‘Urban Piety in the Later Middle Ages’ in R.B. Dobson (ed.), *Church, Politics and Patronage in England and France in the Fifteenth Century*, Gloucester, 1984, pp. 209-234. Other examples of the use of wills as indicators of the nature of later medieval and early modern piety are: Thompson, ‘Piety and Charity’, 187-188 and P.W. Fleming, ‘Charity, Faith and the Gentry of Kent, 1442-1529’ in A.J. Pollard (ed.), *Property and Politics: Essays in Later Medieval English History*, Gloucester, 1984, pp. 36-58.

<sup>76</sup> R.B. Dobson, *English Historical Review*, cii, 1987, 477-478, review of N.P. Tanner, *The Church...*

<sup>77</sup> Burgess, ‘Wills and Pious Convention ...’, p. 15.

the 'intractable problem' of scribes, for example, who may or may not have used standardized forms, and who may have influenced the incidence and content of testamentary bequests. The possibility that surviving wills are more likely to represent the wealthier classes; the probability that although late medieval and early sixteenth-century wills survive in abundance in the probate registers of ecclesiastical courts, that many more wills may have been lost, are further factors, cited by Dr Burgess, which might ensure that the evaluation of pious bequests is problematic. Such difficulties are compounded by the equally fundamental problem of establishing what proportion of a testator's total provision is expressed in his or her testament. Burgess has observed that wills were made only to implement part of what a testator judged necessary and/or possible after death, and therefore shed little or no light on the testator's concerns, and the nature of provision made during his or her lifetime.<sup>78</sup>

Using as the basis of his argument wills made by the inhabitants of late medieval Bristol, Dr Burgess has cited the custom of *legitim*, which was still apparently observed by some inhabitants of that locality in the later fifteenth century, to emphasize the probably limited view of an individual's personal estate provided by his or her testament (since, where *legitim* was observed, only the soul's part might be recorded, while two-thirds of the estate might pass unrecorded to the testator's wife and children, who might have been expected to devote some of their inheritance to pious deeds and prayers for the soul of the testator). Pious convention (that is, the existence of traditional and customary provision for the souls of the dead) could also influence (and very often limit), the amount of detail contained in a will concerning pious intentions. These conventions were normally of a corporate nature (for example, the members of religious guilds and confraternities would pray for fellow members, whether or not such prayers were requested in a testator's will), but pious bequests were often of an individual character, concerned primarily with funerary

---

<sup>78</sup> Burgess, 'Wills and Pious Convention ...', p. 16.

practice and provide little information on the pious practices of the community over a sustained period. Dr Burgess also observes that testaments of personalty might survive where the testator's will of land has been lost and that thus, pious conditions attached to bequests of real property cannot always be included in an evaluation of that individual's spiritual provision.

Burgess has suggested that the sterile character of late medieval pious practices observed by some historians may be a function of the limited and problematic nature of testamentary evidence on which their studies have been wholly, or largely based.<sup>79</sup>

While Dr Burgess' points are cogently and persuasively argued, it must be said that he may himself be guilty of reducing almost to sterility the late medieval canonical will. His opinion of testamentary evidence as a basis for the study of piety is perhaps exemplified by his description of the residual clause which appears in many testaments (and which may encompass an unspecified proportion of an individual testator's pious provision) as:

... an arrangement, blandly stated ... so common as to appear a protocol devoid of substance.<sup>80</sup>

Since the residual clause was a 'protocol' which embodied one of the salient qualities of the late medieval will (see below, page 76) and which from both a legalistic and an individual point of view, was of the utmost importance in ensuring that a testator enjoyed adequate control, through the medium of his will, over the disposition of his property, Burgess' dismissive description may indicate a lack of understanding of the fundamental character and function of the document in question.

---

<sup>79</sup> Burgess, 'Wills and Pious Convention ...', p. 30.

<sup>80</sup> Burgess, 'Wills and Pious Convention ...', p. 20.

Dr Burgess' insistence on the necessity of a more contextual approach to the study of testamentary bequests, both in the sense of one part of a will being studied in the context of the whole document (including bequests of real property) and that the document being studied in conjunction with other contemporary evidence, must be regarded as a positive contribution to the study of wills. But the further step of studying a will or group of wills in the full context of their legal function must also be taken if the inadvisable 'pressing of wills into historical service' is not to be replaced by the discarding of this abundant source of information.

Burgess has not, perhaps, reconciled the fact that, as he acknowledges, copious additional information which would facilitate a more complete and dependable view of pious provision rarely survives, with his admission that ultimately, the detail and variety of wills' content proscribes any thought of discarding them.<sup>81</sup> He may have placed too much emphasis on the possibility of satisfactorily evaluating pious intentions with the assistance of additional evidence and have insufficiently stressed the secular influences upon pious intentions which are apparent if the development and nature of the canonical will is properly considered.

The Bedfordshire wills indicate that the origin of, and motivation for, pious bequests (beyond the essential purpose of achieving a good end) may have been mundane as well as spiritual and that the increasingly statistical use of pious bequests, noted by Dr Burgess, may cause considerable distortion and prevent the satisfactory evaluation of late medieval piety. For example, the wills under study reveal that in the decades leading up to the dissolution of the monasteries, four hundred and five (52.05 %) testators made a bequest of some kind to a religious house. Superficially, this figure may seem to indicate that there was a considerable body of support for the monastic orders among the inhabitants of early sixteenth-century Bedfordshire.

---

<sup>81</sup> Burgess, 'Wills and Pious Convention ...', p. 30.

But what does this statistic really indicate about the nature of piety in that county during the period under study? First, the difficulties of establishing the origin of such bequests must be considered. As with the bequest of the soul to God, it is impossible to know whether the motivation for a bequest to a religious house came from the testator, or from his or her scribe or advisor, or indeed, whether it was an accepted part of will-making in a given locality. A substantial proportion of such bequests were made by testators who lived within the same parish as the religious house, or order, named as a beneficiary. Thomas Joy of the parish of Cauldwell in Bedford, for example, who made his will in the year 1505 left to 'the prior and brethren to sing a trental 10 shillings'.<sup>82</sup> This testator did not bother to identify the prior and brethren, or the religious house to which they belonged, but he appointed the Prior of Cauldwell as one of his executors, the implication being therefore that it was the priory within Thomas Joy's own parish which was to benefit. Local custom and convention may have exerted considerable influence on the nature of pious provision made by individuals who lived within a short distance of a monastery.

It must be said that not every testator who lived within the same parish as a religious house made a specific bequest to that house, although an incalculable number of testators may have intended such a bequest to be implemented and it was either included in the residual clause, or was enacted by a testator's descendants or executors as a matter of course.

The four hundred and five Bedfordshire testators who made a bequest to a religious house must therefore represent the minimum number of individuals who left property to the monasteries, and a far greater proportion may have intended such a bequest to be implemented, but did not bother, or have time to specifically record the fact in their will. The incidence of 'local' bequests to religious houses may therefore

---

<sup>82</sup> Beds. C.R.O. ABP/R 1, p. 82d.

have been of an even higher proportion than is specifically indicated. It must also be acknowledged that the hazards of statistical analysis being what they are, a far greater proportion of testators may also have made bequests to a non-local monastery than is actually apparent, and this might diminish the significance of the group of testators who named a local religious house as a beneficiary.

The complexity and diversity of the factors which may have influenced the inclusion of a specific bequest to the monasteries and the character of that bequest, are indicated by the extensive and detailed bequests made by some individuals who lived within a parish in which a religious house was situated. If Thomas Joy felt able to outline his bequest in fairly vague terms, the close proximity of a monastic order could prompt other testators to make lengthy and apparently personal provision. Katherine Vyncent, a widow of Elstow, whose will is dated the 14th of January 1509, made the following bequests:

... to the Abbas and Convent of the Monastrey of Elnestow to be  
dystribute Amongs them after the advisement of myn executors vis. viiid  
... to the seyd monystory a towells off dyaper to be a housling towell and  
Dame Lucy to have the keyping therefof there for the term of her lyffe ...  
to Dame Alys Mownford my bed that I lye yn with that apertenynyth to  
ytt for the terme of her lyffe and after her decesse to be delivered yn to the  
Wardrope of the seyd monastry aforeseyd and yt to remayne. And also I  
wyll that the seyd Dame Alys schall have a kyrtyll and a chaffer with a  
handell and another without a handell and a ketell ... I wyll that Dame  
Elnowr schall have my best goold ryng for the terme of her lyffe and after  
to remen to Our Lady off Jhesyou ...<sup>83</sup>

It is possible that Mrs Vyncent was resident in the abbey of Elstow at the time her will was written, or she may have been nursed during her last illness by the nuns of the abbey (her will was proved within three months of being made). If this was indeed the case, this testator's bequests may have been made out of affection and gratitude to

---

<sup>83</sup> Beds. C.R.O. ABP/R 1, p. 53.



the beneficiaries, rather than out of purely spiritual motives. On the other hand, if this will was made within the abbey, the influence of those attendant upon the testator' (an influence which might not always have been benign or selfless) must be taken into consideration.

Richard Meryweather of Warden whose will is dated the 2nd of August 1518, also made detailed and lengthy bequests to the religious house within his own parish. He asked that his body should be buried a 'in the monastery of Warden before the rood' and bequeathed to:

the abbot of Warden one-hundred and twenty sheep which are at Rowney, also two bullocks which are at the malt house ... to the masters of the monastery of Warden forty shillings to be divided by the abbot ... to the lord of Warden and his successors ... eighty sheep to farm and let and the rent arising to kepe a yearly obit in the monastery ...<sup>84</sup>

Richard Meryweather appointed as his supervisor (see below, pages 82-84), the 'lord of Warden' and left forty shillings 'for his labours' in this capacity. This testator's references to the 'lord of Warden' are of particular interest as they serve to remind the historian that monasteries were not merely centres of contemplation and prayer, but had, by the medieval period become powerful and prosperous landowners.<sup>85</sup>

Some bequests in the examples were apparently made for a spiritual purpose, but the dual function of many monasteries as religious houses and vast agricultural estates may have caused a complex and primarily secular relationship to develop

---

<sup>84</sup> Beds. C.R.O. ABP/R 1, p. 236.

<sup>85</sup> See G.W.O. Woodward, The Dissolution of the Monasteries, 1966, chapter one and G.R. Elton, England Under the Tudors, 2nd edition, 1974, pp. 181, 187-188, 205, 209-210, 214, 219; A. Hamilton-Thompson (ed.), Visitations of Religious Houses, vols i-iii, Lincoln Record Society, 1914-1929; For a concise survey of the landed wealth and the general state of the monasteries in early sixteenth-century Bedfordshire, see R.C. Marks, 'The Dissolution of the Monasteries in Bedfordshire – an Introductory Survey', 1968, Unpublished Typescript, Beds. C.R.O. CRT 170/1/17.

between the religious house and its neighbours and tenants. William Arnold of Elstow, for example, who made his will on the 20th of June 1526 bequeathed to:

the lady abbess of Elstow a twybill [axe].<sup>86</sup>

Was this gift to the abbess intended to elicit prayers on the testator's behalf (no specific request for masses or prayers is made in the will)? Or was it perhaps an attempt by a not very prosperous tenant simply to please the abbess who may well have been the testator's landlord? Gifts made by the tenants and neighbours of the religious houses may frequently have been made for political and domestic, as well as for spiritual reasons.

The motivation for, and influences upon, the inclusion of a bequest to a religious house are, therefore, extremely difficult to establish from an individual will, as are the determinants of the wording and nature of such a bequest. It must be said that even where 'copious other information' existed to indicate, for example, whether a testator had a life-long devotional association with a particular religious house, or whether the testator was a tenant of property belonging to that house, the full motivation for a bequest to a monastery or monasteries would remain elusive. Every testator must have been subject to many influences, concerns and anxieties at the time of will-making, both secular and pious, and it would be unwise to suggest that documentation of any kind might reveal his or her innermost feelings.

Bequests for pious purposes were perhaps the most vulnerable to the advice and influences of those present at the making of the will and to local custom and convention, but such influences did not have a uniform effect on the incidence and nature of pious intentions, and the individual circumstances or preferences of the testator may ultimately have dictated the form of provision. To regard testaments as being exclusively or even primarily expressions of spiritual concerns is to ignore the

---

<sup>86</sup> Beds. C.R.O. ABP/R 1, p. 248d.

complex inter-action of the secular and the pious which characterizes the canonical will, and is symptomatic of a lack of understanding of the nature and function of a last will and testament. Thus, any claim that the inclusion of a bequest to a religious house by more than half the testators under study may indicate that substantial support existed for the Bedfordshire monasteries in the decades leading up to the dissolution, would clearly be at best simplistic, and at worst, quite inaccurate as a purely spiritual indicator.

It may be difficult, or even impossible, to evaluate the truly pious content of, and motivation for, a particular bequest, but studied from a more general viewpoint, a superficially pious bequest might convey something of the testator's community. Whether for spiritual or secular reasons (or both) a very high proportion of testators who lived in close proximity to a monastic house, made or caused to be made (or at least felt it necessary to specify in their will) a bequest to that house.

That parish custom was not the only determinant in this matter is indicated by the variety of the provision made by the Bedfordshire testators which indicate an incalculable mixture of personal and customary influences. The group of wills under study may therefore have something to reveal about the complex and probably diverse relationship which existed between a monastic house and its neighbours and tenants. Whatever the nature of that relationship, the monasteries apparently exercised sufficient influence over their immediate localities to elicit an individualized response from testators.

Because these wills provide a partial, fleeting picture of this aspect of early sixteenth-century life, one which may defy meaningful statistical analysis, should they be ignored as a source of evidence? Clearly, it would be less wasteful for the historian to adopt a more flexible attitude towards the study of these documents, acknowledge their difficulties, and utilize them on a more diversified and contextual

basis.

### Bequests of Personal Goods

Lengthy, itemized, bequests were not confined to those intended for charitable and spiritual purposes; Maitland noted that the medieval will was characterized by the large number of its specific bequests:

The horses are given away one by one; so are the jewels; so are the beds and quilts, the pots and pans.<sup>87</sup>

Support for this view is to be found in abundance in the Bedfordshire wills, particularly, but by no means exclusively, in the wills of female testators. Margery Edwards of Oakley, who made the will on the 21st of December 1516, left:

To Harry my son did a qrt of barly a candilstyke a plat a pewt dyssh my lesse cofer a brase pott and a tabyll ... To ame my dowter a cove ii quarters barly my best pan ii payre of shets on payer on flaxyn and an other of harden a grene cover lett my best tabill clothe my best cofer ii polowys a plat a pewter dissh a basyn my best gown my second gown my best kyrtil and ii towells ... to John Margetts all my hey my strawe my chaffe a coulter a payer of stradiln and an ambre ...<sup>88</sup>

This meticulous itemization of goods to each beneficiary would seem to be incongruous with the failing health of the testator (Margery Edwards' will was proved within two weeks of being made) but it does reflect the very serious nature of will-making and the close association of the disposal of worldly goods with an individual's spiritual preparation for death. On a more mundane level, this itemization of goods may have served as a 'checklist' against which the goods recorded in the inventory (which was sometimes required by the ecclesiastical judge before probate could be

---

<sup>87</sup> Pollock and Maitland, The History ..., vol. ii, p. 339.

<sup>88</sup> Beds. C.R.O. ABP/R 1, p. 171.

granted)<sup>89</sup> could be compared, and thus gave the testator's estate a measure of protection against a dishonest executor.

The greater concern with detail displayed by female testators cannot entirely be attributed to the fact that their wills often consisted largely of bequests of personalty, while male testators may have been more concerned with bequests of real property which was the subject of a use, the details of which might be contained in a document other than their will.<sup>90</sup> Sheehan has observed that greater detail is to be found in the testaments of females than of males in the tenth and eleventh centuries, long before the use became common in wills.<sup>91</sup> This is not to deny that by the early sixteenth century the device of the use and the possible existence of an indenture setting out the terms of the enfeoffment may have influenced the amount of detail concerning a bequest of real property contained in a will. However, the existence of greater detail in the wills of female testators in the earlier medieval period, when both male and female will-makers were concerned with the disposition of personalty, over which customary rules exercised some control, does perhaps indicate that other factors may have been influential.

The Bedfordshire wills indicate that women may have made their wills and testaments earlier in their life-cycle than men. The highest percentage of wills of female testators occurred in the category of Bedfordshire testators whose wills were proved more than twelve months after they had been made. Fifteen (25 %) of all wills proved more than a year after being made were those of female testators, although women accounted for only a very small proportion, sixty-three (8 %) of the testators

---

<sup>89</sup> Ralph Houlbrooke, Church Courts and the People During the English Reformation, Oxford, 1979, pp. 91-92; Holdsworth states that the ecclesiastical courts 'compelled the representative to produce an inventory'. A History ..., vol. iii, p. 591.

<sup>90</sup> See below, p. 152 of this study.

<sup>91</sup> Sheehan, The Will ..., p. 103.

under study. Without any precise information on the date of an individual testator's death the implications of this evidence are difficult to interpret. It is possible, for example, that the wills of female testators tended to be presented for probate less quickly than those of their male counterparts, or were dealt with more slowly by the ecclesiastical courts.

If there was a tendency for female testators to make their will and testament before the onset of mortal illness, or at least in the early stages of illness, this might explain in some measure the greater detail of their bequests – they were simply in a healthier and more composed state than many male testators when they made their will and could therefore impose their own personality on the content of their will and testament. However, the will of Margery Edwards, quoted above, shows that considerable detail and itemization could apparently be imposed by a testator even during mortal illness. The possibility must be considered that some testators may have made a preliminary copy of their will and testament while they enjoyed good health and this was 'written up' by their scribe into a more formal document when necessary. Or, an earlier will could have formed the basis of a last will with some alteration. Determining exactly when the will and testament which was recorded in the probate register was written, may be an impossible and fruitless task, and the final product may have been the result of a variety of stages and adaptations.

Bequests to god-children might also be included at this juncture, as might references to the testator's debts.<sup>92</sup> Maitland has observed that, unlike the specific manner in which gifts of personalty are often recorded, in the medieval will the testator rarely records details of his debts. Most of the Bedfordshire testators who mention their debts do indeed simply ask that they will be paid by their executor (see

<sup>92</sup> Bequests to god-children occur in one hundred and seventy-five (just over 22 %) of the Bedfordshire wills under study and these bequests usually consisted of a sheep or a cow, or a small item of money. See for example, the will of John Skott of Oakley, dated 8 October 1505, Beds. C.R.O. ABP/R 1, p. 78.

below), but two of the testators include an itemized account of the debts owed to them.<sup>93</sup> The debts owed to Agnes Smyth of Houghton Regis, whose will is dated the 26th of January 1504, are listed in Latin (although the rest of the will is written in English) and are set out as a separate section in account form at the end of the will; another example of the versatile and flexible character of a last will and testament in which the pious and the secular concerns of the individual might appear in a variety of forms.<sup>94</sup> The list of debts recorded by Thomas Nele of Yelden, who made his will on the 16th September 1532, are included within the body of the will and can be said to be illustrative of some of the problems which the historian may encounter when attempting to interpret information contained in wills and testaments, and to establish the origin of, and influences upon, certain bequests.

The debts owed to Thomas Nele are set out thus:

Thes be the detts the whiche be oweng to me furst the pson of Rushden [Northants.] for a gyldyng £iii vi s. viii d. Blowfeld of Cawcar xxvi s. viii d. It[em] Robt. Small hors cob. of London xxiii s. iv d. It[em] John Talor of Willington for resuming of Rent £v. Item John alee of Willington for Rent xl s. Item to one in Pyry [? Polterspury, Northants.] that married Edmunds Bayneth wyffe x s. It[em] John Lambert vi s. viii d. It[em] the smyth for a gelding xl s. It[em] William Smythe bocher xxii s. viii d.<sup>95</sup>

A measure of pity must be felt for Thomas Nele's executors (who were his wife and son) who were faced with the duty of collecting these debts from people who are identified in the vaguest of terms. It is possible that Thomas Nele's son was involved in his father's business, which was apparently that of a dealer in horses, and could

---

<sup>93</sup> Beds. C.R.O. ABP/R 1, p. 68d. Debts could also be cancelled in a will. Thomas Smyth of Bedford (St Pauls) who made his will on the 3rd of October 1504, 'forgave' his son Simon his debts of 13s. 4d., Beds. C.R.O. ABP/R 1, p. 46; for a discussion of the executor's duties regarding the payment of a testator's debts see Holdsworth, *A History...*, vol. iii, pp. 588-591.

<sup>94</sup> Beds. C.R.O. ABP/R 1, p. 36d.

<sup>95</sup> Beds. C.R.O. ABP/R 3, p. 68d.

identify 'the one in Pyry that married Edmunds Bayneth wyffe'. Thus, the information given in the will is limited because the testator assumed additional knowledge to be possessed by those who were to fulfil the will.

It is interesting to speculate on the nature of the original declaration of this section of the will. Are the descriptions of the debtors a verbatim recording of the testator's words, or was Thomas Nele's speech feeble and the scribe struggled to record what he could (Thomas Nele's will was proved less than three months after it was drawn up)? Another possibility may be suggested; the testator's family was probably anxious that all the money owing to him should be retrieved after his death and the list may have been based on information given by Thomas Nele's wife and son. The circumstances of will-making must surely have at times required, or at least drawn forth, the contribution in some form of interested parties.

Whatever the difficulties of interpretation and questions raised by Thomas Nele's inclusion of a survey of debts owed to him, the autobiographical information on the testator's occupation can at least be appreciated.<sup>96</sup>

References to wardship (see the case study of Robert Spencer's will on page 211), and to marriage portions, were also made by some of the Bedfordshire testators.<sup>97</sup> Since, in theory, any concern felt by a testator for the future well-being of his family and property and the declaration of intentions by which these could be safeguarded was the very essence of a will, the character and range of bequests and subject matter were correspondingly varied.

Most of the Bedfordshire wills contain a residual clause, disposing of goods (usually moveable but some testators specify that the 'residue' refers to real and

---

<sup>96</sup> See below, pages 124-126 of this study.

<sup>97</sup> See for example, Beds. C.R.O. ABP/R 1, p. 203, the will of Thomas Rossell of Stevington.



personal property)<sup>98</sup> which had not been specifically bequeathed, and which are often left to the executor or to the testator's wife, who is directed to dispose of the property for the good of the testator's and other souls. The residual clause was of considerable importance, not only because a sick and weak testator might not have been able to itemize all his goods, but also because a will was an ambulatory instrument; that is, it was capable of bestowing that property which did not belong to the testator at the time he or she made the will, but which was in the testator's possession at his or her death.<sup>99</sup>

### Bequests of Real Property

In an integrated will and testament the bequests of real property would normally follow the customary and charitable bequests outlined above, but might be made conditional upon the fulfilment of a spiritual or charitable request, reflecting the fact that, despite the indivisibility of land under common law rules, a testator could feel bound to use his or her real property for the discharging of both secular and spiritual responsibilities – one of the factors which prompted the development and popularity of the device of the use (see page 142).

Bequests of land could be recorded separately from bequests of personalty in an *ultima voluntas*, although it is possible to find in the wills under study examples of personalty being bequeathed in an *ultima voluntas* which consisted mainly of bequest of real property and items of realty bequeathed in a testament of predominantly

---

<sup>98</sup> See for example, ABP/R 1, p. 74d, the will of William Core of Potton, dated 1 October 1505.

<sup>99</sup> Pollock and Maitland, *The History ...*, vol. ii, p. 315; under common law rules this applied only to moveable goods. When real property became devisable at common law in 1540 the courts held that a testator could only devise that real property which he held at the time the will was made. By the period under study a declaration of uses embodied in a will of land was held to be an ambulatory instrument. Holdsworth, *A History ...*, vol. iv, p. 440.

moveable items.<sup>100</sup> The separation of bequests of personal and real property was therefore somewhat spurious, not only because the disposal of both types of property was considered by testators to be necessary for the making of a 'good end', but also because in practice it was apparently acceptable for bequests of moveable and immoveable property to be included at any point in the document. The informality of will-making which obtained during the period under study as a deterrent to intestacy, could apparently override the scruples of testators and their testamentary advisors on the technical differences between realty and personalty in the eyes of the law.

It would be wrong to assume that all the details concerning a bequest of land are included in a will. Feoffees and/or executors could have received verbal instructions from a testator concerning real property which are not specified in the document. Robert Spencer of Cople for example, whose will is dated the 20th of March 1520, asked that under certain specified conditions his *feoffees to uses* would allow his executors to take the profits of a named messuage, during the lifetime of the testator's daughter and dispose of the 'sayd profits according to my mind which they know'.<sup>101</sup> And Robert Cooper of Tempsford, who made his will on the 28th of March 1522, declared that:

I will that my feoffees enfeoffed in the said tenement late butler's and other lands and pastures... make thereof a state to such persons as shall be namyd by myn executors.<sup>102</sup>

(Although the names are not listed in the will).

Furthermore, where the use was employed, a separate document from the will, called an indenture, was sometimes drawn up at the time of enfeoffment (and before the declaration of the uses in the feoffor's will) in which the terms of the use were

---

<sup>100</sup> Beds. C.R.O. ABP/R 2, p. 174.

<sup>101</sup> Beds. C.R.O. ABP/R 2, p. 174.

<sup>102</sup> Beds. C.R.O. ABP/R 2, p. 11.

rehearsed and a less detailed declaration was therefore made in the will,<sup>103</sup>

## Executors

At the end of the testament, or integrated will and testament, the testator named his or her executor(s) and supervisor(s), who are frequently left some reward for their services, and who might be unaware of their appointment until the reading of the will. Failure to appoint an executor was almost equivalent to intestacy in the eyes of the Church, although, as has been observed in chapter two, the fulfilment of a will where no such appointment was made, could be carried out by an administrator appointed by the ecclesiastical judge.

As the personal representative of the testator, the executor's position was one of considerable importance. From the instigation and oversight of masses and prayers to be said for the testator's soul, to the settlement and retrieval of the testator's debts, the executors duties could be wide-ranging and onerous.<sup>104</sup>

Although both before and after the Statute of Wills of 1540, an executor was not supposed to have anything to do with the testator's real property, which was meant to pass straight to the heir at common law, and after 1540 directly from deviser to devisee, the development of the use brought the administration of realty within the executor's sphere of action. Thomas Stoughton, a husbandman of Roxton, for example, who made his will on the 31st of March 1528, left his messuage and land to his wife 'until Michaelmas twelvemonth', after which his executors (one of whom was also a *feoffee to uses*), were to provide her with a messuage and appurtenances to the value of 6s. 8d., and sell the remaining land, with the oversight of the vicar of the

---

<sup>103</sup> Holdsworth, A History..., vol. iv, p. 422.

<sup>104</sup> Pollock and Maitland, The History..., vol. ii, p. 336 and Plucknett, A Concise History..., p. 738 give comprehensive accounts of the duties of an executor.

parish and use the resulting money to 'find a priest'.<sup>105</sup>

The extensive powers which could be given by a testator to his or her executor are exemplified in the will of Thomas Walcot of Sandy, whose integrated testament and last will is dated the 20th of September 1505, and who declared that:

It shall be leful to myne executors to Alow or otherwyze change here after any passell of this my last will iff it bethought by them to be for a better purpose for the profet of my wyffe or children or for the exoneracion of my consciens.<sup>106</sup>

(One of Thomas Walcot's executors was his son, Thomas, and the other was his 'Welbelovyd neybur', Thomas Atkyns).

Executors could therefore find themselves responsible not only for the testator's entire fortune, and the management or sale of part or all of his real property (and consequently for the future well-being of the testator's family), but also through their fulfilment of the will, which embodied the testator's discharging of his or her earthly responsibilities and pious wishes, the executor shouldered a perceived responsibility for the health of the testator's soul. It is therefore unsurprising that some testators express concern that their executor's will fulfil the terms of the will accurately and responsibly, in the best interests of the decedent. John Skott of Oakley, for example, who made his will on the 8th of October 1505, left the residue of his goods to his executors to be disposed of to an 'honest' priest for his, his wife's and all Christian souls 'as thei will Answer Afor the hey Juge to this ... testament'.<sup>107</sup> The choice of an executor or executors must therefore have been a careful and considered one, and may have been made by all but the youngest of the testators

---

<sup>105</sup> Beds. C.R.O. ABP/R 2, p. 140.

<sup>106</sup> Beds. C.R.O. ABP/R 1, p. 106.

<sup>107</sup> Beds. C.R.O. ABP/R 1, p. 78.

before the onset of mortal illness and the actual drawing up of their will.

In her recent study of gender and society in three Norfolk villages in the early modern period, Susan Dwyer Amusson has attempted to use the male testators' choice of executor as an indicator of the sexual division of labour, and has asserted that:

The choice of a wife as executor indicates that a husband believed that his wife could satisfactorily wind up his earthly business; the decision to join her with someone else suggests that she is not familiar with at least some of his activities; and the exclusion of her altogether suggests her inability to comprehend the business he had in hand.<sup>108</sup>

In the Bedfordshire wills under study, three hundred and ninety-four (56 %) of male non-clerical testators appointed their wife as an executor, and of these, ninety-four (24 %) named their wife as sole executrix. If Amusson's assessment of the implications of the appointment of a wife as sole or joint executor is accepted, it can be concluded that although a little more than half the Bedfordshire testators who could have had a wife (and it is impossible to assess using the wills alone how many of the male non-clerical testators were actually married, and how many were single or widowed) thought their spouse sufficiently capable and knowledgeable to execute at least some of their instructions, only slightly less than a quarter of this group believed their wife to be capable of fulfilling all the terms of their will.

However, Amusson's assessment of the use of the office of sole and joint executors, as an indicator of the sexual division of labour in early modern England, may be too simplistic. Just over half (three hundred and fifty-five) of the Bedfordshire testators used in this study appointed a son as their executor, but of these only forty-five (12.56 %) named their son as sole executor; the remainder naming either their spouse or other sons, or another relative, or a priest or neighbour, as joint

---

<sup>108</sup> Susan Dwyer Amusson, An Ordered Society: Gender and Class in Early Modern England, Oxford, 1988, p. 81; Beds. C.R.O. ABP/R 2, p. 81.

executor. If it is concluded that a testator's son was not named as sole executor because he was not considered to be sufficiently aware of all his father's activities and business, then this perceived inability to carry out all the testator's instructions cannot be attributed entirely to gender. Where a son is appointed as co-executor with the testator's wife, it is surely dangerous to assume that it is the wife who is thought to be incapable of fulfilling all the terms of the will, unless there is further evidence to support this conclusion. The duties of an executor were onerous enough to justify the appointment of joint executors, whatever their gender, and may not reflect in any way the sphere of action, and capabilities of, men and women during the period under study. Only one hundred and sixty-four (21 %) of the Bedfordshire testators appointed a single executor or executrix.

Of the ninety-five testators who clearly envisaged executorial involvement in the implementation of bequests of real property, only three appointed a sole executor: John Archer of Liddington, who made his will in the year 1518 (the exact date is unclear) appointed his widow as his executrix and declared that if his heirs died without issue, his executor was to sell the real property bequeathed to them and the money was to be used for the benefit of the testator's and other named souls.<sup>109</sup> The property concerned was left initially to the testator's wife for her lifetime and then to his heirs, thus the sale of the property would only be undertaken by the widow if all the named heirs pre-deceased her. Such an eventuality was entirely possible in the early sixteenth century, and this testator at least, apparently felt no qualms about entrusting the task to his wife.

The two other Bedfordshire testators who entrusted the implementation of the terms of a will of land to a sole executor were Joan Russell of Dunstable, whose will is dated the 10th of December 1513, who named a male executor whose relationship

---

<sup>109</sup> Beds. C.R.O. ABP/R 2, p. 80.

(if any) to the testator is unclear<sup>110</sup> and John Lord of Potton (will dated the 20th of June 1530) who appointed his son John as executor.<sup>111</sup>

The choice of executors must surely have been influenced by a variety of factors, most noticeably the existence, age, character and capabilities of marriage partners and offspring. Since it is frequently impossible to determine the extent and characteristics of a testator's family before the advent of parish registers, a survey of the identity of executors and of their relationship to the testator can reveal little about the motives which determined the testator's choice.

### Supervisors

Having named their executors, some of the Bedfordshire testators appointed a supervisor (sometimes called an 'overseer'), who was frequently a priest or someone of higher social standing than the appointor and could assert his authority over the executor(s) when necessary. The supervisor's duty, as the title implies, was generally that of overseeing the fulfilment of the will and keeping a restraining eye on the executors, but his involvement in the administration of the will was not necessarily reserved for those occasions on which the executors failed in some aspect of their duties. Thomas Grant of Dean, who made his will on the 3rd of July 1500, left to his executors and overseer for their lifetime the rent of a close 'called Brownsclouse lying at the Warenshende', to keep the testator's obit in the church of Dean.<sup>112</sup> And Margery Edwards of Oakley (whose will has already been quoted on page 71 of this chapter) declared that her executors were not to do anything without the consent of her supervisor, Sir John Wyan.

---

<sup>110</sup> Beds. C.R.O. ABP/R 1, p. 156.

<sup>111</sup> Beds. C.R.O. ABP/R 3, p. 29d.

<sup>112</sup> Beds. C.R.O. ABP/R 1, p. 13.

Women were less popular in this capacity in the wills under study, with only three testators appointing their wife as a supervisor. Since more than half of the male non-clerical Bedfordshire testators named their wife as an executor, this substantial group were obviously unable to appoint their wife as the overseer of their will, and the choice of supervisor may have been determined more by the standing and influence of the appointee rather than by gender (gender could of course be a determinant of the status and degree of influence enjoyed by an individual). Sir William Newton, clerk and chaplain of the fraternity of St John the Baptist of Dunstable, for example, who made his will on the 8th of August 1500, appointed as his supervisor, Thomas Lynde, 'valet of the king'. And John Day of Souldrop, whose will is dated the 21st of January 1505, named his supervisors as 'Sir John Saynt John and Master William Morgon, Doctor'.<sup>113</sup>

The three females who were appointed as supervisors in the group of wills under study, were in each case the wife of the testator. Of these, one is clearly of high social status. Alexander Ratclyff, whose will was drawn up on the 3rd of July 1505, and who gave no clear indication of his native parish, appointed 'My Lady' as his co-supervisor with his brother Sir Robert Ratclyff.<sup>114</sup> It is difficult to determine the status of the two other testators who named their wife as supervisor (in each case these were sole appointments). Neither testator made any reference to his status or occupation or referred to his burial place. The content of their wills does not, however, indicate prosperity or high social standing.<sup>115</sup> The three testators in this group all made wills in the early years of the century; it is possible that in Bedfordshire women became less likely to be appointed as supervisors as the century

---

<sup>113</sup> Beds. C.R.O. ABP/R 1, pp. 20d and 67 respectively.

<sup>114</sup> Beds. C.R.O. ABP/R 1, p. 87.

<sup>115</sup> The wills of John Derlynge, dated 1502, Beds. C.R.O. ABP/R 1, p. 33 and John Stowe of Bedford (St Pauls), dated 17 March 1502, Beds. C.R.O. ABP/R 1, p. 35d.



progressed.

## Witnesses

For a will to be declared valid and for probate to be granted, two witnesses to the testator's assent to the will were required, or three if the witnesses were open to 'minor exceptions' such as friendship. Maitland observed that the general rule of canon law:

Seems to have been that a will could be sufficiently attested by the parish priest and two other witnesses, but that two witnesses without the parish priest would suffice if the testator was leaving his goods to pious uses.<sup>116</sup>

The Bedfordshire wills provide evidence which indicates that the Church's horror of intestacy was of sufficient strength to grant probate even where the number of witnesses was less than that required by law. At the conclusion of the will of John Hyll of Lidlington (dated the 26th October 1500) only one person, Sir William Howson, vicar of Lidlington, is recorded as witnessing the will (although it is possible that the probate clerk did not bother to record more than one name in the register), and yet probate was granted less than two months after the making of the will.<sup>117</sup> And following the will of John Wheler of Marston Moretaine (dated the 20th of November 1500) no witnesses at all are given, and this will was proved within a month of being made.<sup>118</sup> John Wheler's will was fairly brief and consisted of mainly 'charitable' bequests, but John Hyll's will contained bequests of both moveable and immoveable property and was not confined to bequests of property for 'pious' purposes.

---

<sup>116</sup> Pollock and Maitland, *The History...*, vol. ii, p. 337, n. 5.

<sup>117</sup> Beds. C.R.O. ABP/R 1, p. 22d.

<sup>118</sup> Beds. C.R.O. ABP/R 2, p. 21d.

Generally however, the Bedfordshire wills indicate that more witnesses than the number required by law were present at the signing or sealing of the will, which suggests that the making of the testament was often a far from private occasion. It is difficult to accept that friends, neighbours and would-be beneficiaries were willing to crowd round the death-bed of an individual at a time when infectious illness of epidemic proportions was still not a rarity; and as Swinburne observed, all the witnesses were not required to be in the same room as the testator during Will-making.<sup>119</sup> And yet the list of witnesses, which is often a long one, and the frequent inclusion of phrases such as 'and other moo.' and 'with divers others' at the conclusion of the list, does convey the impression that the witnessing of a will could be something of an event in early sixteenth-century Bedfordshire.

A long list of witnesses may have been encouraged by testamentary advisors to add weight to a will, in case of a dispute over a bequest of personalty (which came under the jurisdiction of the ecclesiastical courts) or realty (which would be heard in Chancery). Those testators who wished their will to be proved in solemn form were required to have at least seven witnesses present, who had to be summoned specifically for the making of the will and not be present merely by chance.

But the presence of seven or more fellow parishioners may have fulfilled other functions and have been of use for those testators who intended their wills be proved in common form. Thomas Bonham of Carlton, who made his will on the 24th of February 1528, declared at the end of his integrated will of bequests of realty and personalty:

I gyve and grant all my sayde howys and landys to Henry Grovys and Richard Page beying ffeoffers to thys foresayde use wyche apperuth yn a dede of feoffment to them made. Thys to record Syr John sarter

---

<sup>119</sup> Swinburne, *... Testaments*, p. 330.

Alexander Ferrer William Bethery with other,<sup>120</sup>

A list of witnesses to the will had already been recorded earlier in the document, some of whose names correspond with the second list and one of whom is one of the feoffees. For those testators struck down by mortal illness, and who had not made any previous preparation for the disposal of their real and personal property, the presence of a group of friends and neighbours provided the testator with a pool of individuals from whom to choose feoffees, witnesses and even executors in a public and immediate manner.

It has already been observed that the wills of the Bedfordshire testators were often witnessed by a priest or cleric, who may also have been the scribe of the will, or at least the advisor on testamentary matters, and Sheehan has noted that in the early medieval period the inclusion of a priest in the list of witnesses may have been obligatory.<sup>121</sup> Witnesses however, could be chosen from all sections of society; the will of John Lord of Thurleigh which was drawn up on the 1st of July 1528, included a sumpter, a husbandman and a scholar in the list of witnesses.<sup>122</sup>

Women were not apparently popular in this capacity in Bedfordshire during the period under study, with only three testators naming a woman as witness. It is impossible to know whether this was because women tended to be included in the unidentified 'diverse others', while male witnesses were more likely to be named, or whether females were generally regarded as being unsuitable as witnesses. Women seem to have been banned as witnesses in Europe in the medieval period but this rule did not obtain in England; as Swinburne observed, women witnesses were quite as

---

<sup>120</sup> Beds. C.R.O. ABP/R 3, p. 3d.

<sup>121</sup> Sheehan, *The Will*, p. 180.

<sup>122</sup> Beds. C.R.O. ABP/R 3, p. 2d.

good as men in the eyes of the law.<sup>123</sup> The law could not, perhaps, always persuade society to disregard its prejudices, and sometimes the prejudices of the law did not coincide with those of the populace.

The good opinion and acquiescence of womenfolk, and the consequent sense of allowing a wife and other female relatives to witness the making of a will was observed by one of the Bedfordshire testators; Thomas Knecht of Bedford St Pauls, who made his will on the 26th of February 1530, recorded in his will that:

I desyred the vicar of Powells to Rede this my last testament ... in the p'sens of Joone my wyffe the wich was never absent from me in makeng of this will be consented to all things therein contenid. Jone West and Anne Knecht and Jone ... and will all things this my last will contened was very well content and charged theme that yt shoulde never the altered.<sup>124</sup>

Neither the testator's wife nor the other two women mentioned in this section of the will are named in the list of witnesses. Thomas Knight's wife was appointed as co-executor of the will (together with three other, male, appointees) but this admonitory declaration may suggest that with or without an official appointment, women could have influence over the enactment of a last will and testament.

## Probate

If a decedent's testament was to become legally effective, it had to be approved by an

<sup>123</sup> Sheehan, *The Will*..., p. 179; Swinburne, *... Testaments*, p. 330.

<sup>124</sup> Beds. C.R.O. ABP/R 3, p. 106d; Houlbrooke has noted a dispute heard before a Winchester court in 1562 in which witnesses described how a testator had been 'badgered' on his death-bed by his mother and his wife, who were intent on drawing from him a declaration of his intentions regarding the disposition of his property. *The English Family*..., p. 233, citing Winchester Record Office, CB13, fos 220-221. The 'badgering' of individuals by would-be beneficiaries was not of course confined to women and may have been a common hazard for testators who made (or were pestered to make) their last will and testament after their health had failed (see above, page 75).

ecclesiastical judge who would entrust its execution to the executors appointed by the testator, or if those named refused the executorship, or died before the will could be proved, to the testator's next of kin.<sup>125</sup>

The many layers of ecclesiastical jurisdiction, and the fact that a secular jurisdiction, such as a manorial court, might demand to prove a will which touched upon its own interests, must frequently have added to the burdens of executorship, not only because it was the executor's duty to determine the appropriate court, but also because lay and ecclesiastical courts could both demand to prove the same will.

Executors were guided in their choice of ecclesiastical court by the general rule of jurisdiction, which was that a testator who died in possession of *bona notabilia*, or five pounds worth of goods wholly in one jurisdiction could prove therein. If the testator had *bona notabilia* in more than one jurisdiction, he or she had to prove in the higher overriding court. Thus, if a testator held property solely in one archdeaconry, or other minor court (such as a rural deanery or parish) he could prove therein, but a testator who held possessions in two archdeaconries would have to prove in the episcopal court; and in the case of testators who held goods in more than one bishopric, it was necessary for his executors to prove the will in the archbishop's prerogative court.<sup>126</sup>

Houlbrooke has noted that the appointment of jurisdiction between bishops and archdeacons varied from one diocese to another, and sometimes from one archdeaconry to another, and that disputed boundaries often gave rise to conflict. It is difficult to assess how such disputes may have affected or delayed the process of probate and added to the worries of the executor; but Houlbrooke has observed that 'only rarely does one read of the quashing of a probate granted by an inferior

---

<sup>125</sup> Houlbrooke, *Church Courts* ..., pp. 91-94.

<sup>126</sup> Camp, *Wills and Their Whereabouts*, p. x.

court'.<sup>127</sup>

Peter Walne has suggested that, for individuals who left property worth less than five pounds, 'no will was necessary'<sup>128</sup> but this statement needs some qualification; in theory, all those who were not prohibited by some rule of law, had reason to make a will in order to make a good end, for the well-being of their soul. This making of a 'good end', in practice, usually required the disposition of material goods, but the value of those goods was immaterial to the pre-eminent motivation for will-making (that is the avoidance of intestacy which suggested that the decedent had died without the ministrations of a priest). The church courts may not have been interested in registering or proving the will of an individual whose estate was worth less than five pounds, but the teachings of the Church on the subject of intestacy held good for these individuals as well as for the wealthy.

Within the group of testators under study, the will of John Spencer, a gentleman of Pavenham, provides an interesting example of probate being granted in more than one ecclesiastical court. John Spencer's will, which clearly contains references to property outside the jurisdiction of the court of the Archdeacon of Bedford, but not apparently to property outside the diocese of Lincoln, was proved in the prerogative court of the Archbishop of Canterbury on the 5th of February 1533 (just over twelve months after it was drawn up) but is also recorded in the registers under study as being proved in the court of the Archdeacon of Bedford on the 10th of December 1532.<sup>129</sup> There are minor variations in the recording of the will in the two registers, and the small differences in content and in the spelling of the names of

<sup>127</sup> Houlbrooke, Church Courts..., p. 91.

<sup>128</sup> P.J. Walne, English Wills: Probate Records in England and Wales with a Brief Note on Scottish and Irish Wills, Virginia State Library, 1964, p. 18.

<sup>129</sup> Beds. C.R.O. ABP/R 3, p. 78; P.C.C. PROB 11/24, fo 23, p. 174d; Margaret McGregor (ed.), Bedfordshire Wills Proved in the Prerogative Court of Canterbury, 1383-1548, B.H.R.S., vol. lviii, 1979, p. 142 has already pointed out that John Spencer's will was proved in both courts.

beneficiaries, may be a salutary indication of the degree of accuracy of the wills as they were recorded from the original into the probate registers.

The fact that John Spencer's will was proved in the archdeacon's court before being proved by the prerogative court of Canterbury does seem to refute the general rule of jurisdiction, since it may indicate that the former had demanded to prove the will as it referred to property within its own archdeaconry. Probate in the archbishop's court followed because of property held by the testator in more than one archdeaconry and, possibly, because the more prosperous sections of society considered that proving their will in the prerogative court was a matter of prestige, and decisions made in the higher court may have carried more weight in the event of a dispute.<sup>130</sup> The executors were therefore forced to prove in two courts rather than just the larger, overriding court. Thus, if a testator chose to prove in the higher court, he or she would apparently have to prove in the lowest permissible court as well.

John Spencer described himself as a 'gentleman' and appears to have been a wealthy man, whose estate could well withstand the deduction of fees for probate by the archdeacon's and the archbishop's courts, but the estate of testators of small means may have found the probate and acquittance fees (for the scribe) a heavy burden. Even when an executor was dismissed by the probate court in *forma pauperis*, the acquittance fee due to the scribe was still enforced.<sup>131</sup> Generally, the wills of less than wealthy individuals were proved in the lowest permissible court, whose fees were smaller than those of the larger, more prestigious courts.<sup>132</sup>

---

<sup>130</sup> McGregor, Bedfordshire Wills ..., p. ix.

<sup>131</sup> Houlbrooke, Church Courts ..., p. 95.

<sup>132</sup> Camp, Wills and Their Whereabouts, p. xi.

## Fees

The preamble of the 1529 Probate Act accused the ecclesiastical courts of taking as much as two or three pounds for the probate of a will, and the act introduced a new scale which provided for fees of 6d for goods valued under five pounds, rising to five shillings for those valued at over forty pounds. Some courts maintained a standard fee (as in Chichester, where it was 10d).<sup>133</sup> The scale of fees laid down by this act remained operative for the rest of the sixteenth century, but Christopher Kitching has observed that there were several major loopholes in the statute which weakened its effectiveness. In particular, the act 'failed to spell out exactly what was covered by the probate fee', which left registrars a great deal of discretion.<sup>134</sup>

Despite the sometimes onerous fees, Houlbrooke suggests that:

the great majority of probates ... were sought without prompting by those concerned ... an incalculable but probably smaller portion of the population were too poor for it to be worth the court's while to track down their meagre estates.<sup>135</sup>

And Camp has observed that up until about 1750:

it seems to have been quite usual among small folk not to prove the will at all, if there was no dispute saving both delay and fees.<sup>136</sup>

The nature and effect of the social bias which may be present in wills which survive in the registers of an ecclesiastical court will be discussed in chapter four.

---

<sup>133</sup> Christopher Kitching. 'The Prerogative Court of Canterbury from Warham to Whitgift', in R. O'Day and F. Heal (eds), Continuity and Change: Personnel and Administration of the Church in England, 1500-1642, Leicester, 1976, p. 227.

<sup>134</sup> Kitching, 'The Prerogative Court ...,' p. 208.

<sup>135</sup> Houlbrooke, Church Courts ..., p. 94.

<sup>136</sup> Camp, Wills and Their Whereabouts, p. xi.



## Speed of Probate

In Bedfordshire in the early sixteenth century, there were at least ten different ecclesiastical courts which could claim some measure of jurisdiction in the county.<sup>137</sup> Of the court with which this study is concerned, that of the Archdeacon of Bedford, little evidence of its sixteenth-century activities have survived. The court was usually held by the archdeacon's commissary, who is frequently mentioned in the surviving churchwardens' accounts for Bedfordshire as well as in the probate act following each will (see below) and was apparently held every two or three weeks at Bedford, Woburn and Ampthill.<sup>138</sup>

In the early sixteenth century, the ecclesiastical courts were criticised for their slowness in granting probate (the major complaint of the Commons' Supplication against the Ordinaries of 1532 was that they delayed too long before making grant of probate)<sup>139</sup> but it is difficult to determine whether the court of the Archdeacon of Bedford can be accused of this fault. Although it has already been observed that a substantial proportion of the Bedfordshire wills were proved within three months of being made, it is impossible to ascertain what the inhabitants of Bedford would have regarded as 'reasonable' delay between the testator's death and the granting of probate. Some of the Bedfordshire wills were proved with a speed which would amaze and confound twentieth-century executors and lawyers (forty-four (5.6 %) of the wills under study were proved within a week of being made).

There were a wide range of circumstances which could affect the speed with

---

<sup>137</sup> Courts which enjoyed jurisdiction in Bedfordshire during the period under study are listed by Gibson, Wills and Where to Find Them, pp. 7-8.

<sup>138</sup> J.E. Farmiloe and R. Nixeamann, Elizabethan Churchwardens' Accounts, B.H.R.S., vol. xxxiii, 1953, p. xiii.

<sup>139</sup> Houlbrooke, Church Courts, p. 95.

which a will was proved; if, for example, a testator died shortly before the archdeacon's court was due to sit and his or her executors were of an efficient and conscientious character, then there was little reason why the will should not be proved quickly. On the other hand, if a testator died just after a court sitting, or while the court was inhibited during the course of a visit by an ecclesiastical superior,<sup>140</sup> then probate could be delayed for some time.

An incalculable proportion of wills may also have been subject to minor irregularities (see below), which would cause further delay before probate could be safely granted. Such factors as these are surely reflected in the sixty-eight (8.7 %) of the wills under study which were proved more than three months, but less than a year after being made.

Once the appropriate court had been selected by the executor, the will was brought (together with at least the minimum number of witnesses required by law), before the ecclesiastical judge and the process of probate could proceed.

## Jurisdiction

Maitland determined that the jurisdiction of the ecclesiastical probate courts encompassed two distinct functions:

- i. Competence to decide whether a will is valid, whenever litigants raise that question.
- ii. A procedure, often a non-contentious procedure, for establishing once and for all the validity of a will, which is implicated with a procedure for protecting the dead man's estates and compelling his executors to do their duty.<sup>141</sup>

---

<sup>140</sup> Walne, English Wills ..., p. 22.

<sup>141</sup> Pollock and Maitland, The History ..., vol. ii, p. 341.

The Church's jurisdiction was, however, limited (in theory at least), to the personal goods and charitable intentions of the testator and had no authority over real property. This theoretical distinction was not in practice readily achievable, or compatible with the fact that some testamentary intentions might only be fulfilled through the sale or management of land and buildings.<sup>142</sup> This might bring the 'interest' of the church courts into the sphere of real property on two counts. First, it could necessitate the establishment of the validity of the will of land, or bequests of land, as well as the validity of the testament or testamentary clauses. Second, as has already been observed, the executors, who were not in theory meant to have anything to do with the testator's realty, might be directed under the terms of a use to administer land in some way, and these directions were contained in the will. Thus, the church courts, who enjoyed authority over the executor may indirectly have acquired authority over wills or bequests of land.

That the nature of the church courts' authority over an executor might involve them directly in the administration of real property is perhaps exemplified by the will of Agnes Butt of Elstow, who made her will on the 11th of October 1524, and who left to her son William:

all such lands and tenements I have to executorship of John Willshire,  
paying for it five pounds to Katherine his wife and heirs.<sup>143</sup>

Since Mrs Butt was sanctioning the sale of lands held by her in executorship to her own son, it can only be assumed that a conscientious ecclesiastical judge would want to determine that the sale was an honourable one, and the purchase price fair.

---

<sup>142</sup> Even after the Statute of Wills of 1540 by which land became devisable at common law, the executor, over whom the church courts exercised jurisdiction, had nothing to do with real property which was expected to pass straight from devisor to devisee. Pollock and Maitland, *The History* ..., vol. ii, p. 348.

<sup>143</sup> Beds. C.R.O. ABP/R 2, p. 37.

Although ecclesiastical law allowed the executor freedom in the way in which he or she executed the discretionary powers entrusted to them, the authority of the church courts over a deceased's representative was of a practical and effective nature. The ecclesiastical judge could demand the production of an inventory of the deceased's goods before probate was granted, and compelled the executor to account at the close of his administration. Any executor who behaved in a way considered to be unsatisfactory could be removed by the ordinary, and corrupt activities were deterred by the strict rules which governed the conditions under which an executor might purchase his testator's goods. Although an individual who was appointed by a testator to be his representative could refuse to take up the executorship, once he had accepted the office he could not retire as and when he pleased.<sup>144</sup>

### **Probate in Common Form**

During the sixteenth century there were two ways in which a will could be admitted to probate. The first, and probably the most widely used, was that of probate in common form, whereby the executor, accompanied by the witnesses, brought the will before the ecclesiastical judge. The will was read by the judge in the presence of the witnesses and executor, after which he administered to them the solemn oath (usually upon the gospels) that the will was true and complete. This oath followed a standard form:

this will that you have now heard read, is the true will, last will, and whole will of [testator's name] late departed, and that there is no other will made by the said [testator], neither by word nor writings since this will was made that you know of, so help you God and the holy contents of that book.

After which the witnesses were required to kiss the book and the executor(s) were

---

<sup>144</sup> Holdsworth, *A History...*, vol. iii, p. 592.

required to give 'sufficient promise or pledge to render account of their administration when called upon to do so'.<sup>145</sup>

### Probate in Solemn Form

However, probate in common form could be challenged and overturned at any time during the ten years following its granting and therefore if there was reason<sup>★</sup> to suspect that a dispute over the will might arise, or if the validity of the will was in doubt, a longer and less challengeable procedure known as probate in solemn form might be undertaken. This process was usually commenced by the executor, and a citation was issued against all persons having interest in the estate (usually the person who would have the right to the administration if probate failed was specifically named) to be present at the proving of the will. At which time, the will was exhibited in court and witnesses were sworn and examined on the circumstances of the making of the will, in private by the court's examiner.

Seven witnesses needed to be present at the making of a will to be proved in solemn form, and they had to be 'required' and not simply present by chance (see above, page 85). Probate by this means, therefore, usually had to be contemplated before the making of the will, and not as an afterthought. If the will was opposed at this juncture, interrogatories were administered to the witnesses by the party contesting, or allegations entered on his behalf to which the agent (plaintiff) might be required to reply. At the conclusion of the proceedings the judge pronounced on the validity of the will and it could not be further challenged except by way of appeal.<sup>146</sup>

Where there were irregularities in the will (if it was unsigned or unwitnessed

---

<sup>145</sup> Houlbrooke, Church Courts ..., p. 93.

<sup>146</sup> Swinburne, Testaments, p. 331.

for example), a similar procedure would be taken as for a nuncupative will and witnesses could depose to the known handwriting or intentions of the testator. Thus, in order to be proved a will did not have to be either signed or sealed; establishing the intentions of the testator was at all times the ultimate purpose of the ecclesiastical judge.

### The Probate Act

Once probate had been granted, a probate act was passed and was recorded in a probate act book. The act would also be endorsed on the original will (which, until the end of the sixteenth century, was normally returned to the executor) and a further copy of both the will and the act was recorded in a bound volume of registered wills.<sup>147</sup>

The probate act was normally written in Latin and although it varied in form and wording, generally stated the place and date at which probate was granted, the name of the ecclesiastical judge or official who presided and declared that the executor(s) appeared before the judge and propounded the will as truly that of the testator, and that probate was granted to the appointed representative. There may also be an addition to the act, stating that power was reserved to a second executor named in the will, who had not appeared before the judge.

In the registers under study, the probate act is sometimes recorded in an apparently truncated form, stating only that probate was granted, but listing no details.<sup>148</sup> And some wills are recorded without a probate act at all.<sup>149</sup> It is difficult

<sup>147</sup> Camp, Wills and Where to Find Them, p. ix.

<sup>148</sup> See for example, the probate act following the will of Richard Swift of Roxton, dated 26 March 1526, Beds. C.R.O. ABP/R 2, p. 135d.

<sup>149</sup> See for example, the will of John Hardyng of Harlington, dated 12 April 1523, Beds. C.R.O. ABP/R 2, p. 8.

to establish whether this was due to the inefficiency of the probate clerk, or whether these wills had been registered in the probate court in anticipation of the granting of probate which never took place. It may be unwise to assume that all the wills in the registers under study were enacted.

Some probate acts are squeezed into margins, or written partially over the following will in the Bedfordshire registers, which does suggest that probate could be granted some time after the recording of the will. Wills were, therefore, apparently recorded in the registers soon, or even immediately, after they were received, although probate would, of course, only be granted when the court was sitting. The clerk did not always leave sufficient room between the wills for the probate act to be clearly recorded.<sup>150</sup>

The process of probate brought before an ecclesiastical judge the intentions of the decedent for the disposition of his goods and chattels, and sometimes of his realty. These intentions were perceived to have an influence on the health of the testator's soul as well as on the future well-being and prosperity of his family. Through the judge's jurisdiction over the testator's representative, the executor, the Church may have enjoyed considerable authority over a decedent's entire estate, or at least that part of his estate which is included in the terms of the will.

Will-making may still have been strongly influenced by the traditional association between the expression of a last will and the giving of the last rites. The increased freedom over the disposal of property which the disappearance of the custom of *legitim* (in the southern province) and the development of use allowed, may have weakened this association and persuaded some individuals (before the onset of

---

<sup>150</sup> See for example, the probate act following the will of John Balla of Dunton, dated 20 March 1506, which is written partly over the beginning of the will of James Ede of Bedford, Beds. C.R.O. ABP/R 1, p. 78d.

illness) to record their wishes concerning the disposition of their property after their death.



## CHAPTER FOUR

### THE WILL-MAKING POPULATION

The identity and social distribution of testators are aspects of will-making which have received some considerable attention from historians. It has been asserted that only a fraction of the population who might have made a will did so, and that this minority was not evenly distributed throughout society. The poorer strata of society, it is claimed, are under-represented as testators and historians have concluded therefore, that wealth, property ownership and the often related factor of family responsibilities were the major determinants in will-making in the early modern period.<sup>1</sup> This chapter will discuss the work of historians who have attempted to identify the will-making population and will examine the information provided by the wills under study on the identity of the Bedfordshire testators.

In the early sixteenth century the capacity to make a will was determined by a sometimes conflicting mixture of ecclesiastical, customary and common law. The medieval Church's horror of intestacy undoubtedly prompted the ecclesiastical lawyers to express the opinion that all individuals were capable of making a will unless prohibited by some rule of law, and to contest the testamentary incapacity (according to common law) of some sections of society.<sup>2</sup>

## Contested Capacity

### *i. Married Women*

During the period under study, all adult men and single women of free status, who were in full possession of their mental faculties and lived within the law, were entitled to full testamentary powers. Those constrained from making a will formed three major groups; married women, infants and villeins, and it was over the testamentary capacity of these three categories that ecclesiastical, customary and common law

---

<sup>1</sup> See for example, Cressy's observations on this point in, *Literacy* ..., p. 106.

<sup>2</sup> Holdsworth, *A History* ..., vol. iii, pp. 541-545.

could differ.<sup>3</sup>

Married women as *femmes couvertes* were denied by common law the right to own any chattels – the sole and absolute property of chattel interests rested with the husband, ‘to be disposed of at his pleasure’.<sup>4</sup> It has been suggested that the only exceptions to this rule were the ‘apparel and ornaments of the wife suitable to her rank and degree’, but legal historians have observed that these items only survived to the wife if the husband had not alienated them during his lifetime.<sup>5</sup>

The Bedfordshire wills provide some conflicting evidence on this point. William Core, a butcher of Potton who made his will on the 1st of October 1505, left to his wife all ‘hyr Rayment’<sup>6</sup> but Agnes Newbold of St Peter Dunstable in Bedford, whose will is dated the 4th of September 1500, apparently did not have to wait until her husband’s death to enjoy the ownership of ornament and apparel and other chattel items. This married testator (she appointed her husband her sole executor), made a lengthy will of spiritual and charitable bequests of personalty:

Also I geve and biqueth to Ouy Lady in Sancte Peter chyrch before rehered my best gyrdyll. Also I geve and biqueth to Goldington chirch xiid... Also I biquith to Thomas my broder a bullok... Also I geve and biqueth to Margeri ... my clenlyaste gowne...<sup>7</sup>

The two other wills of married women recorded in the probate registers under study also contain bequests of chattels and indicate that the ‘ownership’ of personalty by married women (presumably, but not necessarily, by the gift of their husband) was not

---

<sup>3</sup> Holdsworth, *A History ...*, vol. iii, pp. 541-542.

<sup>4</sup> Alan Macfarlane, *Marriage and Love in England, 1300-1849*, Oxford, 1987, p. 272.

<sup>5</sup> See for example, Holdsworth, *A History ...*, vol. iii, pp. 526-527.

<sup>6</sup> Beds. C.R.O. ABP/R 1, p. 74d.

<sup>7</sup> Beds. C.R.O. ABP/R 1, p. 21.

confined to the town of Bedford (see below).

Whatever went on in practice, the common lawyers' view that a married woman could not own chattels led them to prohibit married women from enjoying testamentary capacity, since in theory they had no goods to bequeath. Ecclesiastical lawyers on the other hand, who saw the primary motive for will-making as being for the health of the individual's soul, rather than the disposal of property (although, where will-making was concerned the two were closely connected and to some extent interdependent), asserted that married women should be allowed normal testamentary powers. The canonists' view is surely further evidence that in practice, and whatever the common law's view, married women did own chattels, since it is unlikely that the Church would suggest full testamentary capacity for a group of people who did indeed have nothing with which to make their spiritual and charitable bequests. It is possible to argue that a will could be made without the bequeathing of property (simply by the bequeathing of the soul to God for example), but if this was the case, no such will has survived in the registers under study; there are very short wills with bequests of items of small value, but all include a charitable bequest of a material item of some sort.

The struggle between the ecclesiastical and common lawyers over this point continued throughout the later medieval period but by the sixteenth century the canonists' failure to formulate any clear theory on the matter or to find any community of chattels between husband and wife in Roman law, allowed the common law rule to prevail, which upheld the view that a married woman could only make a testament with the consent of her husband and that this consent could be withdrawn at any time before probate was granted. This rule can perhaps be seen as a realistic compromise between theory and practice; the husband's superior power was upheld, but there was acknowledgement that a wife could be allowed by her spouse to own

and dispose of personal property and thus a will could be made.<sup>8</sup>

It should be noted that for married women there was a clear distinction at common law between chattels and real property. Unless a wife formally transferred real property to her husband it remained in her ownership, and although the husband enjoyed the rents and profits from the land during the marriage, he could not sell or alienate any part of it. If a wife died before her husband her realty passed to her heir(s).<sup>9</sup> It is possible to argue that the Church was keen to assert the testamentary capacity of married women because they hoped to benefit from a bequest or real property.

Although land was not devisable under common law rules the development of the device of the use meant that a married woman (who could be both a *cestue que use* and *feoffee to uses*, see page 159) might devise real property. Of the three female Bedfordshire testators who are clearly married women, two include bequests of real property in their wills. Joan Beertrofte of Elstow, who made her will on the 20th of March 1509, 'with licence' from her husband, made a few brief spiritual bequests, but the greater part of her will consists of one bequest of realty:

All the tenements, meadows, pastures with tufts, woods, hedges and appurtenances in the vill and fields of Marston or elsewhere in the county, which she had from William Leventherope and Joan his wife, her parents, to her husband Robert Berecrofte [sic] for his life  
[with reversion to Mrs Beertrofte's own heirs].<sup>10</sup>

One of the criticisms levelled at the use in the 1530s was that the device deprived husbands of their *right* to 'courtesy' (that is, a husband's lifetime right to his wife's

---

<sup>8</sup> Pollock and Maitland, *The History*..., vol. ii, p. 428.

<sup>9</sup> Pollock and Maitland, *Ibid*; Holdsworth, *A History*..., vol. iii, p. 544.

<sup>10</sup> Beds. C.R.O. ABP/R 1, p. 54.

land after her death).<sup>11</sup> Mrs Beertrofte's will indicates that although the right to courtesy was denied to husbands where an equitable estate was concerned, they were not always denied that privilege by their wives.

The use was also accused of being the means by which husbands could deprive their wife of her dower but as Bean observed, it is clear that some wives were better provided for under the terms of the use than they would have been through the common law rule of dower.<sup>12</sup> Furthermore, Holdsworth has observed that during the sixteenth century the nature of the married woman's interest in land held to her use did not materially differ from the nature of her legal interest (apart from in respect to courtesy) and that she could no more permanently alienate her equitable interest than her legal interest.<sup>13</sup> Where land had been enfeoffed in tail, by someone other than the testator, it was however possible that as a consequence the husband or wife was powerless to provide for the spouse (see pages 173 and 174 of this study).

The second testator in this group, Elinor Rands of Campton, whose will is dated the 8th of September 1518, declared that she was making her will with the 'consent and assent of her husband'.<sup>14</sup> After her spiritual and charitable bequests, Mrs Rands asks that the 'place' will be sold by her executors, who are to hire a 'convenient' priest to sing in Campton church for her father's, mother's, her own and all Christian souls. Five pounds of the profit from the sale of the property is left to Katharine Hardgrave 'iff she liff to be mariable', and if this beneficiary dies the money is also to go to finding the priest.

---

<sup>11</sup> Pollock and Maitland, The History ..., vol. ii, pp. 416-420; Plucknett, A Concise History ..., pp. 568-569.

<sup>12</sup> Bean, English Feudalism, p. 140.

<sup>13</sup> Holdsworth, A History ..., vol. iv, p. 428.

<sup>14</sup> Beds. C.R.O. ABP/R 1, p. 231d.

Does Mrs Rands' declaration that her 'place' is to be sold and the money used for masses and prayers constitute a permanent 'alienation' of her equitable interest? She does not state in her will that her 'place' was to be sold after her husband's death, but this may have been taken as read by those involved in the making and proving of her will (probate was granted ten days after the will was drawn up). Mrs Rands asks that the chosen priest will sing for her own, her parents' and her husband's souls – the implication being, therefore, that the bequest was to take effect after her husband's death. It is possible that Mrs Rands was not survived by any heirs and that therefore she felt free to dispose of her real property in this manner.

The will of the third married woman in the wills under study, that of Agnes Newbold, already quoted, does not contain any specific bequest of real property but realty may have been included in the 'residue' which was left to the testator's husband.

There is also a joint will made by a husband and wife, recorded in the registers under study. John Faldo and his wife Joan, made their will on the 27th of July 1501, and the will was proved on the 10th of December of the same year, indicating that both John and Joan were either ailing or aged when they wrote the document.<sup>15</sup>

## *ii. Infants*

The second group of would-be testators over which ecclesiastical and common law lawyers disagreed were 'infants', that is, those individuals who had not reached the age of majority. Common law had, by the opening of the sixteenth century, fixed the age of majority for most purposes at twenty-one.<sup>16</sup> Ecclesiastical lawyers however, followed the Roman law rule of majority at fourteen for boys and twelve for girls. In this case, the canonists' rule prevailed and not until the nineteenth century was the

<sup>15</sup> Beds. C.R.O. ABP/R 1, p. 40d.

<sup>16</sup> Holdsworth, *A History ...*, vol. iii, pp. 544-545; Keith Thomas, 'Age and Authority in Early Modern England', *Proceedings of the British Academy*, lxii, 1976, 222.

common law age of majority applied universally to testamentary capacity.<sup>17</sup> The success of the canon lawyers in this respect may have been assured because, unlike married women, 'infants' did have proprietary rights acknowledged by common law, and could even be enfeoffed. Children are frequently mentioned as beneficiaries of both personalty and real property in the Bedfordshire wills; they therefore owned goods with which to make their charitable and spiritual bequests and sometimes owned land which could be the subject of declaration of uses.<sup>18</sup>

The Bedfordshire wills do not supply any direct evidence of the ages of the testators. The existence of more than one 'full age' during the period under study<sup>19</sup> does not allow any precision to be attached to the terms 'infant', 'child' or 'adult', but as will be observed on page 130 of this chapter, the majority of the will-makers under study were clearly either married or widowed and were survived by their offspring, which does not imply a very youthful will-making population.

### *iii. Villeins*

The third group of people who suffered from opposing attitudes to their testamentary capacity were the villeins. Holdsworth observed that to have allowed a villein full powers of testation would have prevented the lord from exercising his rights on a villein's death.<sup>20</sup> There was thus considerable opposition from the lords of the manor and from those who might be expected to uphold the lords' views – the common lawyers – to the granting of full testamentary capacity to villeins. Again, the ecclesiastical lawyers held a different view; they asserted that villeins were of free status (in that they were not slaves in the Roman law sense), and that therefore they

---

<sup>17</sup> Holdsworth, *Ibid.*

<sup>18</sup> Pollock and Maitland, *The History...*, vol. ii, p. 439.

<sup>19</sup> Pollock and Maitland, *The History...*, vol. ii, p. 438.

<sup>20</sup> Holdsworth, *A History...*, vol. iii, p. 542.



had a right to enjoy normal testamentary powers. As in the case of married women the common law rule prevailed and, until the last vestiges of villeinage disappeared, the view was upheld that a lord could exercise his rights as he chose; villeins were allowed to make a last will and testament, but the document would only take effect if the lord chose not to exercise his rights before probate was granted.<sup>21</sup>

Although the incidence and burdens of villeinage had been declining for at least a century before the period under study, manorial courts, the influence of the lord and some of the rights and dues associated with villeinage were still a reality in the sixteenth century. Godber has suggested that in Bedfordshire by the late decades of the fifteenth century, villein service could not be enforced and 'for all practical purposes was obsolete', but she goes on to observe that all peasants:

had not necessarily won free from personal restrictions, such as inability to sue at law, restriction on leaving the manor, liability to pay merchet on his daughter's marriage.

As late as 1577, a Bedfordshire enquiry identified about fifty people who were still legally unfree.<sup>22</sup>

Although a lord could demand to prove a will made by his villein in the manorial court, the ecclesiastical court could also demand to make a grant of probate<sup>23</sup> and such a will might therefore appear in the registers under study.

---

<sup>21</sup> Holdsworth, *Ibid.*

<sup>22</sup> Godber, *A History of Bedfordshire*, p. 144.

<sup>23</sup> Kitching has observed that, 'It was generally accepted in the sixteenth century that, even if secular jurisdiction, such as manorial court or town corporation, could demand to prove a will which touched upon its own interests, further probate by a church court would automatically follow', 'The Prerogative Court ...', p. 192; little work has apparently been carried out on the proving of wills in manorial courts. In an unfinished and posthumously published essay, Elizabeth Levett has observed that there is strong evidence to indicate that in some cases at least, manorial courts exercised a probate of wills. Miss Levett's essay included the texts of wills on the St Alban's court rolls of the middle of the fourteenth century. She has demonstrated convincingly that while the wills

As in the case of married women distinction must be drawn between a villein's rights relating to the disposition of personalty and real property. Until 1504, a villein could be both a *cestue que use* and a *feoffee to uses* and thus enjoy the freedom to devise real property. However, a statute of that year vested the villein's equitable interest in the lord. Henceforth,

if a bondman<sup>24</sup> conveyed lands acquired by him to feoffees to his use, his lord was to have any right to enter on them that would have been his if the bondman had been seised.<sup>25</sup>

That this statute did not entirely succeed in ending the villein's right of devise is indicated by the will of Giles Hebulwhete, a weaver of Shillington, who made his will on the 29th of October 1505. In his separate *ultima voluntas* this testator left to his wife his tenements in Shillington for life, or until she remarried 'with the licence of the lord of the rectory manor'. On the death or remarriage of his widow, Giles Hebulwhete declared that the tenements were to pass to his younger son Richard 'according to the custom of the manor, with the licence of the said lord'.<sup>26</sup> This will is the only one of the wills under study to use such wording, and none of the Bedfordshire testators describe themselves as 'villeins'. Since, by the period under study, 'villein tenure' and 'villein status' had become separated, it was a far from

---

of freemen had been proved before the archdeacon, the wills of villeins were proved before the 'cellarer in the halimote'. H.M. Cam. M. Coates and L.S. Sutherland (eds), Studies in Manorial History, by A.E. Levett, Oxford, 1938, pp. 208-223; Sheehan, The Will ..., pp. 210-211.

24 By the sixteenth century, the term 'villein' had generally been superseded by the term 'bondsman'. See for example, Sir John Clapham, A Concise Economic History of Britain: From the Earliest Times to 1750, 1966, p. 202.

25 Bean, ... English Feudalism, pp. 178-179, citing 19 Hen. VII, c.15.

26 Support for the view that reference to a licence from the lord of the Manor for the purpose of disposing of real property is indicative of villein status is provided by R.H. Hilton's observation on the nature of villeinage in 'Freedom and Villeinage in England' in R.H. Hilton (ed.), Peasants, Knights and Heretics: Studies in Medieval Social History, Cambridge, 1976, pp. 186-187; see also C.N.L. Brooke and M.M. Postan (eds), Carte Nativorum: a Peterborough Abbey Cartulary of the Fourteenth Century, Northamptonshire Record Society, xx, 1960, p. xli.

straightforward matter to define who was, and who was not, a 'villein'. A 'free' person could hold land by 'unfree' tenure, and this divergence of personal status and form of land-holding may be viewed as yet another complexity of the rules relating to the succession of property, as well as to the meaningful categorization of an individual's status.<sup>27</sup>

### Other Groups Denied Testamentary Capacity

There were other groups in society who were prohibited from making a will because of some special circumstance. Medieval lawyers frequently enumerated the many prohibited classes of Roman law, but as Holdsworth observed, many of these classes were wholly inapplicable to the later medieval period. Individuals who were deaf or dumb, for example, were prohibited under Roman law but these disabilities did not necessarily cause testamentary incapacity during the period under study.<sup>28</sup> Circumstances which could still cause testamentary incapacity in the early sixteenth century were insanity, outlawry and attainder, and suicide.

For the condemned man and for the suicide, the denial of testamentary capacity was a form of punishment which operated on both a material and a spiritual basis. The chattels of the condemned fell to the King and those of the suicide were claimed by the King's Almoner (who was frequently a cleric)<sup>29</sup>; the descendants of these unfortunate people were therefore denied their inheritance (of chattels). For the individuals themselves, the greater punishment was probably the perceived threat to

<sup>27</sup> See A.W.B. Simpson's discussion of this subject in A History of the Land Law, 2nd edition, Oxford, 1986, pp. 158-160; Holdsworth A History..., vol. iii, p. 491-509 provides a comprehensive account of the nature and development of villein status.

<sup>28</sup> Swinburne, ... Testaments, Part ii: Holdsworth, A History..., vol. iii, pp. 541-542.

<sup>29</sup> M. MacDonald and T. Murphy, Sleepless Souls: Suicide in Early Modern England, Oxford, 1990, p. 25; Sheehan, The Will..., p. 255.

the souls of those who died *desperade*, without the ministrations of the Church. For those who were held to have committed the crime of 'self-murder', testamentary incapacity was only one aspect of this threat to their spiritual welfare; masses for the souls of suicides were also forbidden.<sup>30</sup>

Individuals who were deemed to be insane at the time of their death did not necessarily die intestate, since they may have declared a last will and testament before the onset of insanity. In cases where intestacy through insanity did occur, the family of the unfortunate individual could normally expect to receive the estate of personalty, according to the discretion of the ecclesiastical judge.<sup>31</sup>

Since each of these groups could have enfeoffed real property before the period of their incapacity and have declared the uses in a will of land, such a will might survive them.<sup>32</sup> However, it is an indication of the different status of a testament of charitable and personal bequests from that of a will of land, that the existence of the latter did not apparently cancel intestacy and the spiritual disabilities associated with that state.

To sum up; provided that they were of sound mind and lived within the law, all men over the age of fourteen who were of free status, together with all single and widowed women of free status over the age of twelve, enjoyed normal testamentary capacity during the period under study. Married women who obtained the consent of their husband, and villeins who gained the permission of their lord, could also make a last will and testament, although they could not be entirely confident of their wills being proved. The substantial group of individuals who enjoyed full testamentary capacity, together with the Church's declared horror of intestacy (see chapter two),

---

<sup>30</sup> Murphy and MacDonald, *Ibid.*

<sup>31</sup> Sheehan, *The Will*..., p. 255-256.

<sup>32</sup> Sheehan, *The Will*..., p. 255; Holdsworth, *A History*..., vol. iv, p. 428.

has led historians of the law to suggest that intestacy was rare.

### The Size of the Will-Making Population

Assessment of the proportion of the population who took advantage of their testamentary capacity is only possible to any degree of accuracy where burial registers, or other surveys of population, survive. In his study of the inhabitants of Banbury between 1558 and 1723, Richard Vann found that only about a quarter of the men and a tenth of the women who might have made a will did so, and that this percentage remained fairly constant throughout the period under study. It should be noted that, at the time of Vann's study, the inaccessibility of the prerogative court of Canterbury wills may have prevented him from making an accurate assessment of the proportion of testators in the Banbury population.<sup>33</sup>

Heather Swanson, citing the will-making population figures for York and those produced by R.S. Gottfried for Bury St Edmunds (20 % and 66 % respectively), has suggested that the will-making population may have been larger in the southern province because of the decline of the custom of *legitim* and the subsequent freedom of individuals to dispose of their chattels as they chose.<sup>34</sup>

Evidence that a significant proportion of the land-holding population may have died without leaving a will has come from Spufford's study of wills from the Cambridgeshire village of Willingham. Using a survey of Willingham land made in 1575, Dr Spufford found that:

about 45 % of the tenants who held land, or a commonable house, in

---

<sup>33</sup> Richard T. Vann, 'Wills and the Family in the English Town, 1550-1800', Journal of Family History, 1979, 346-347.

<sup>34</sup> Heather Swanson, Medieval Artisans: An Urban class in Medieval London, Oxford, 1989, p. 155, citing R.S. Gottfried, Epidemic Disease in Fifteenth-Century England, Leicester, 1978, pp. 22-23.

Willingham in 1575, made a will or were represented by a will in the next twenty-eight years.

And she observes that since she does not know how many non-commonable houses, or sub-tenanted divided houses there were in Willingham in 1575, this figure of will-makers must be regarded as a maximum.<sup>35</sup>

For historians using wills from the 'dark ages' of population study before the advent of parish registers, and from areas where no other community listings survive, the problem of assessing the proportion of the population which left a last will and testament would seem to be insurmountable. However, the probate registers used in this study provide stark evidence of the apparently small proportion of the population which made use of its testamentary capacity. In 1502 for example, the wills of only eight individuals were proved in the court of the Archdeacon of Bedford, and in the year 1510, only three. At a time when epidemics and infectious disease were still common, it would be foolish to accept that these wills represent with any accuracy the number of individuals who died in the county in these years. The archdeacon's court was, of course, only one of several ecclesiastical courts which enjoyed jurisdiction in Bedfordshire in the early sixteenth century (see chapter three), and records of wills which were proved by these courts may add to the total number of those who used their power of testation.

Paul Slack has used the changing number of wills proved from year to year in eight areas of England to determine fluctuations in mortality levels during the early modern period. Dr Slack has acknowledged that the use of wills for this purpose has disadvantages and limitations. He has cited the social bias which may be evident in wills and observes that this is a particularly serious limitation when a disease such as

---

<sup>35</sup> Margaret Spufford, 'Peasant Inheritance Customs and Land Distribution in Cambridgeshire from the Sixteenth to the Eighteenth Centuries', in Goody, et al., *Family and Inheritance* ..., p. 169, n.16.

the plague may have hit the poor and the young disproportionately. Numbers of wills may, therefore,

understate changes in mortality in a whole population and even fail altogether to reveal years which were critical for that section of society which did not make wills.<sup>36</sup>

It must be said that Slack's use of the proving dates of wills may also cause some distortion of annual mortality trends. It has been observed on pages 92-93 of this study that a variety of factors could determine the lapse of time between the making and proving of a will – and some wills were proved several years after they were drawn up. Even in cases where the making and proving of a will were separated by a few months, the testator may have died in the year before probate was granted. Dr Slack has noted the difficulties involved in will-making during the onslaught of an epidemic but he does not appear to have considered that there must also have been considerable disruption to court sittings at such times and probate may generally have taken longer to achieve. This is not to deny that fluctuations in the number of wills recorded in a probate register may provide some indication of changes in the death-rate. However, the time lapse between the making and proving of a will should be considered.

Years in which few wills were registered with the court of the Archdeacon of Bedford and those with a large total of wills are evident throughout the period under study, which may indicate that good and bad harvests, and the onset and cessation of outbreaks of epidemic disease remained part of the pattern of life and death in Bedfordshire during these decades. But can the number of registered wills show anything more precise than a general movement in the death rate over a given period?

---

<sup>36</sup> Paul Slack, *The Impact of Plague in Tudor and Stuart England*, Oxford, 1990, p. 55. See also pp. 54, 56-60, 72, 105, 127-138, 147-148, 158-159, 164. The areas studied by Dr Slack were London, Essex, Berkshire, Worcester diocese, Leicester, Lichfield diocese, Exeter diocese and East Sussex.

It is necessary to consider that factors which affected the health of the community (such as the quality of the harvest) could also affect levels of prosperity.<sup>37</sup> It is possible that years in which a high number of wills were recorded represent periods of prosperity, in which a high proportion of testators felt able to register their will with the ecclesiastical court. Years which are represented by few wills may indicate years of difficulty in the farming community, when wills were less likely to be registered, although the death-rate may have been high.

Slack's use of wills 'proved' – those which had apparently been through the process of registration and probate by an ecclesiastical court, may therefore be oversimplistic and does not take fully into account the administrative and economic factors which must surely have influenced the number of wills proved in any given year. These factors, which without additional information on court sittings, for example, and the annual prices of agricultural products in a given locality, may be very difficult to evaluate, may have played some part in causing the discrepancies which Dr Slack observed between numbers of probates and recorded burials in sixteenth-century London.<sup>38</sup>

### **The Social Distribution of the Will-Making Population**

As Slack's observations on the limitations of using wills as indicators of annual mortality show, the historian using information derived from wills needs to assess whether the apparently small proportion of the population comprising testament-makers was evenly distributed throughout society or, whether a social bias has to be taken into consideration.

---

<sup>37</sup> See for example M.M. Postan, The Medieval Economy and Society, Harmondsworth, 1975, pp. 265-272, 280-281.

<sup>38</sup> Slack, The Impact of Plague ..., p. 148.



There is evidence to suggest that during the early modern period wealth was a major determinant in will-making and that wills are indeed 'chronically afflicted by social bias'.<sup>39</sup> However, there is also evidence which indicates that wealth was not the only, and in some cases not the major determinant in will-making and that the motivation for using testamentary powers may have varied, not only from one parish to another but also from one individual to another and was dependent upon a complex variety of factors and influences.

The methodologies employed by historians to evaluate the social distribution of the will-making population generally fall into two categories – those who have used information provided by wills in the context of other contemporary documents and those who have used evidence from wills alone. The first strategy can obviously only be employed where other contemporary documents exist, and although it can be regarded as a more satisfactory and reliable method of assessing the social identity of testators than using evidence from wills in isolation, the practical difficulties involved in following this method are, as Vann has observed, 'often overwhelming'.<sup>40</sup>

In his study of wills made by the inhabitants of Banbury in the early modern period (see above), Vann attempts to compare the wealth of testators and non-testators through probate inventories and by comparing their occupational distribution with that in the parish as a whole. Vann himself admits that the use of inventories to determine the wealth and status of testators is not entirely satisfactory, since the inventories of those who died intestate are likely to be a biased sample, for there must have been a considerable number of people who had so little property that it was not worth taking out letters of administration for their goods.<sup>41</sup> Furthermore, as Vann points out, inventories were only taken of moveable goods, while everything heritable

---

<sup>39</sup> Cressy, *Literacy...*, p. 106.

<sup>40</sup> Vann, 'Wills and the Family ...', 347.

<sup>41</sup> Vann, 'Wills and the Family ...', 353.

by custom, including land and most buildings, was excluded. There is a danger therefore, that an individual who had put all, or most of his money into real property, and possessed few moveable goods, might be adjudged 'poor' by the historian when in fact his or her entire estate was worth more than that of an individual with a collection of silver spoons.

Despite these problems, Vann has asserted that inventories 'appear to be the best source for the relative wealth of Englishmen' in the early modern period.<sup>42</sup> Using probate inventories, Vann found that the wealth of those making wills was generally, but not always, higher than that of those who died intestate. Nonetheless, there was always a number of poor testators.

Vann's second method of locating testators within the social structure was to use parish registers to identify the occupation and social status of will-makers, a strategy which revealed an obvious skew towards wealth and prestige in the will-making population. Men such as goldsmiths, apothecaries, mercers and persons designated 'Mr' in the registers were, Vann found 'obviously more prone to make wills', while labourers were under-represented as testators and those whom the parish register described as poor or very poor, were not represented by wills at all.<sup>43</sup> Parish registers can also present problems for the social historian of the early modern period, as the occupation of adult males who were buried only began to be recorded generally towards the end of the seventeenth century, and the few whose occupations were recorded before this date may present a distorted picture of the actual social distribution of those buried.

---

<sup>42</sup> Vann, 'Wills and the Family ...', 353. *Ibid.*

<sup>43</sup> Vann, *op. cit.*, 355-356.

Further evidence which suggests that a social bias may have been present in the will-making population in the early modern period and that this bias was not confined to the market town of Banbury has come from Keith Wrightson's study of the Essex village of Terling. In the 192 wills made by the inhabitants of Terling between 1550 and 1699, Wrightson found that most testators fell into the following social groups:

- 1 Gentry and very large farmers.
- 2 Yeomen, wealthy traders and parish officers.
- 3 Husbandmen and craftsmen.

Testators who came from the category 4 group of labourers, poor craftsmen and poor widows, were under-represented. Wrightson concluded that the Terling evidence indicated that only a small proportion of the inhabitants of the village made a will during the years studied, and that this minority was distributed throughout all sections of society except the very poor.<sup>44</sup>

Evidence which conflicts with the theory of a social bias towards wealth and prestige in the will-making population has been yielded by Spufford's survey of the rural parish of Willingham in Cambridgeshire, in the later sixteenth century. Using a community listing for Willingham for the year 1575 (see above) to identify which heads of households listed there made wills in the following 28 years, thereby comparing:

approximate wealth, disposable goods and economic standing of the men making wills in Willingham at the end of the sixteenth century ... with the economic standing of the whole village community in 1575,

Dr Spufford found that the forty-nine will-makers used in the study were distributed

---

<sup>44</sup> Keith Wrightson, 'Kinship in an English Village: Terling, Essex, 1550-1700', in R. Smith (ed.), Land, Kinship and Life-cycle, Cambridge, 1984, pp. 321-325.

throughout the whole of Willingham society, but the distribution was not even. Landless and very small landholders were much more likely to leave a will than owners of a 'half-yard land or more'.<sup>45</sup>

As Vann observes, however, using a community listing to identify the social distribution of testators has several drawbacks; such a method is limited to the generation after the listing was made and depends on firm linkages between the names of the testators and those on the listing; this is something very difficult to achieve in a rural community where several branches of the same family might hold land.<sup>46</sup> This point is surely also valid where use is made of parish registers to identify the status of testators.

Spufford has herself observed that the evidence is somewhat impressionistic because of the small sample of wills used, but she asserts that the method of comparison was 'less artlessly impressionistic' than it might seem; all the court roll entries for Willingham land were also checked, and all entries relating to testators were added to the information contained in the wills.<sup>47</sup> However, it does seem that Dr Spufford has only used wills which were proved in the consistory court of Ely, and may not have examined the archives of the prerogative court of Canterbury, in which the wills of the wealthier landowners of Willingham may have been proved.<sup>48</sup>

Evidence from Willingham which indicated that absolute wealth was not the major determinant in will-making led Spufford to examine testators in a different social context from wealth and to identify their family responsibilities, using evidence from the wills themselves. Of the forty-nine testators used in the study, Dr Spufford

---

<sup>45</sup> Spufford, 'Peasant Inheritance Customs ...', p. 170.

<sup>46</sup> Vann, 'Wills and the Family ...', 353.

<sup>47</sup> Spufford, 'Peasant Inheritance Customs ...', p. 170.

<sup>48</sup> See page 90 of this study.

found that eighteen had two or more adult sons to provide for, seventeen had unmarried daughters, children under age or unborn children, five were childless and had no obvious heir, and eleven had no obvious domestic reason for will-making.<sup>49</sup> Thus, less than a quarter of the testators had no obvious family reason 'in the form of a child under age to provide for' to make a will. These findings led Spufford to suggest that the need to provide for a young family 'must have been the dominant reason behind the making of a will'.<sup>49</sup> Vann has questioned the significance of this evidence. He suggests that a convincing argument that the stage in the life-cycle (that is when family responsibilities were greatest) is the major determinant in making a will, would show that will-making:

was ... more common among those in the general population who were at those stages than among those at different stages.

He observes that since we have no idea what proportion of the population was at each of these stages, the possibility cannot be excluded that those whom Dr Spufford considers had no obvious reason for making a will were especially likely to do so.<sup>50</sup>

Historians using information derived from wills alone have also found evidence to support the theory that wealth was a major determinant in will-making. In her study of the two hundred and eighty-two wills made by the inhabitants of South Elham in Suffolk between 1550 and 1640, Nesta Evans found that testators in these nine parishes did not represent a true cross-section of society as the poorer classes were very under-represented. Yeomen accounted for 27.3 percent of the will-making population of South Elham, husbandmen 6.4 percent and labourers and servants only 1.4 percent. This led Evans to conclude that 'It is a truism that it is those with possessions who make wills'<sup>51</sup>, although she goes on to observe that this conclusion

<sup>49</sup> Spufford, 'Peasant Inheritance Customs ...', pp. 171-172.

<sup>50</sup> Vann, 'Wills and the Family ...', 356.

<sup>51</sup> Nesta Evans, 'Testators, Literacy, Education and Religious Belief,' Local

does little to explain why not all those who owned land made wills. She also suggests that the difference between the South Elham testators and the Willingham testators studied by Dr Spufford may be attributable to the differences in land use between the two parishes. In the Cambridgeshire fen village (Willingham):

very small holdings were economically viable because of opportunities provided by the fens ... while in wood pasture Suffolk ... South Elham men tended to hold more land than those in Willingham.<sup>52</sup>

Thus, the amount of land held by an individual may not always be an accurate indicator of prosperity or income.

The difficulties and limitations of using wills in isolation are evident in Evans' study (she was only able to use a community listing for one small manor); nearly a third of the wills used in her study did not give the occupations of the testator, and she was thus left with a large group of 'unknowns' (28.7 %), which, properly identified, might have altered the social distribution of testators significantly. Evans did not, however, rely solely on the presence of a declaration of the testator's occupation, and used further evidence from the wills in pursuit of her evaluation of the will-making population of South Elham. She found that in the group of 'unknowns', forty-three were farming on a 'considerable scale', and were thus not members of the poorest sections of society.<sup>53</sup>

But it must be said that using wills to determine the extent of an individual's landed possessions and their consequent social standing is far from straightforward; an unknown number of testators who appear to be landless may have retired from farming and passed their real property to their offspring. How are such people to be

---

Population Studies, 25, 1980, 42-50.

<sup>52</sup> Evans, 'Testators ...', 43-44.

<sup>53</sup> Evans, 'Testators ...', 43-44.

categorized? Although technically landless, and now dependent, they may have been highly regarded and enjoyed considerable respect and authority in their community and were very far removed from landless labourers, a fact which might not be apparent from their wills (especially if they were living with a son or daughter and had also passed on most of their chattels).

The South Elham wills also produced strikingly different evidence from the Willingham wills with regard to family responsibilities. Only 28 percent of South Elham testators:

could be said to have made wills either because they had under-age children, or because they had more than one adult son for whom to provide.<sup>54</sup>

Yet more evidence in support of the theory of social imbalance in the will-making population has come from Amusson's recent study of five Norfolk villages in the early modern period. Amusson found that 'the poorer husbandmen and all those below' were severely under-represented as testators in the collection of wills used. There was a slight variation between the villages in this respect, but even in Wimbotsham, the village with the highest proportion of poor testators, this group only accounted for 20 percent of the total.<sup>55</sup>

Amusson observed that although the occupation and social status of testators were usually given (in contrast with the Bedfordshire wills, see below) they were not always 'precise'. For example, a testator of one of the five villages, Cawston, described himself as a 'worsted weaver' but Amusson felt that the content of his will indicated that the testator might be more accurately described as a husbandman. It is difficult to see why Amusson does not accept this testator's self-description, and even

---

<sup>54</sup> Evans, 'Testators ...', 42.

<sup>55</sup> Amusson, *An Ordered Society* ..., p. 78.

harder to understand why she wishes to assign yet another individual to that amorphous group of individuals known as ‘husbandmen’.<sup>56</sup> It is valuable to remember that most individuals were ‘attached’ to the land at that time, whatever other occupation they may have pursued, but if this fact of early modern life is allowed to influence the social categorization of individuals to any great extent, the historian would be forced to describe nine-tenths of the population as husbandmen or yeomen – even prosperous townsmen, who were clearly skilled in another occupation. How is the historian to establish which occupation (where more than one possibility is apparent) is the dominant and more profitable one, if the testator’s own assessment is ignored?

Amusson also suggests that testators may have claimed a higher social status in their wills than they were accorded by their neighbours.<sup>57</sup> This however, seems to ignore that fact that, as observed in chapter three, will-making was not, generally speaking, a private event. The presence of a scribe and neighbourly witnesses (not to mention the approach of the final judgement for many testators) must surely have deterred will-makers from exaggerating their social importance.

Amusson found that in the villages which she studied, the men who made wills were predominantly married or widowed, ‘fulfilling their final responsibility to their children in providing for their future’ and she observes that wealth and family responsibilities were inter-related and that:

in general property holding accompanied marriage and so single men and women rarely had such property to dispose of.<sup>58</sup>

This assertion does not however, seem to be entirely compatible with the fact that

---

<sup>56</sup> Amusson, *An Ordered Society* ..., p. 78.

<sup>57</sup> Amusson, *op. cit.*, p. 79.

<sup>58</sup> Amusson, *op. cit.*, p. 80.



'infants', and therefore unmarried people, could own both realty and personalty (see above, page 107).

The work of the historians so far discussed would seem to indicate that wealth, possessions and the existence of family responsibilities were the major determinants in will-making. The presence in all these studies of poor (if not the poorest) sections of society as testators, may suggest and reflect another dimension to will and testament-making.

What information do the wills under study provide about the will-making population of early sixteenth-century Bedfordshire? Only sixty-one (7.8 %) of the Bedfordshire testators included a clear and specific statement of their rank or occupation in their will. Of these, the largest group, twenty-four (38.6 %) were in holy orders (there was apparently a clerical desire or obligation to record status and position which was less evident in the lay will-making population). Seventeen (28 %) described themselves as husbandmen. Yeomen and those designated 'esquire' were equally represented, each with two (3.3 %) of this group. Those described as 'gentlemen' were represented by only two testators (3.3 % of this group), as were those who gave their occupation as 'weaver'. The occupations of butcher, mercer, 'smyth' and labourer, were each represented by a single testator.

Some less direct evidence of the will-maker's occupation is provided by the 'alias' attached to some of the testator's names; twelve (1.5 %) of the Bedfordshire testators record an alias and some of these seem to suggest an occupational derivation. For example, Robert Wood alias Smyth of Little Staughton (whose will is dated the 1st of September 1506)<sup>59</sup> and Richard Meryweather/Baker of Warden (whose will was drawn up on the 2nd of August 1518).<sup>60</sup> Not all the aliases admit to

---

<sup>59</sup> Beds. C.R.O. ABP/R 1, p. 90.

<sup>60</sup> Beds. C.R.O. ABP/R 1, p. 236.

straightforward interpretation; perhaps Richard Flecher/Cooke of Northill (will dated the 4th of August 1522) was engaged in both the implied occupations.<sup>61</sup>

Some of these aliases may also indicate the testator's place of origin, Richard Welsh 'otherwise Richard Hews' a parishioner of Dunstable, for example<sup>62</sup> (25th of August 1519); while some do not have any clear meaning, such as Thomas Toms/Mady of Northill (15th of August 1530)<sup>63</sup> and Owen Vap Jenkyn, 'otherwise called Humfrey Gough' a yeoman of Chicksands (11th of May 1517).<sup>64</sup> Perhaps 'Owen Vap Jenkyn' was considered to be a little too ostentatious or foreign for an early sixteenth-century Bedfordshire village; that both names are given in the testament is surely another indication that testators were anxious to be accurate in their personal details and descriptions of themselves in their testaments.

Evidence of the testator's occupation is also to be found in the body of some wills (even where no initial or specific declaration of rank or occupation is made). William Fessand of Cople, who made his will on the 13th of May 1500, included a loom in the items of personalty bequeathed in the testament<sup>65</sup> and may yet be another small farmer who subsidized his income with weaving, or a weaver who subsidized his income with farming (see above, page 122); as was Thomas Shelbourne of Luton, whose will was drawn up on the 16th of July 1533, and who left to his wife 'all that longyth to husbandry' and directed her to sell 'the wool that is in spinning' together with all the cloth.<sup>66</sup> Richard Barton of Bedford St Pauls (whose will is dated the 28th of August 1512) left his apprentice Thomas Comendale his 'shop gear belonging to

---

<sup>61</sup> Beds. C.R.O. ABP/R 2, p. 61.

<sup>62</sup> Beds. C.R.O. ABP/R 1, p. 228.

<sup>63</sup> Beds. C.R.O. ABP/R 3, p. 36.

<sup>64</sup> Beds. C.R.O. ABP/R 1, p. 219.

<sup>65</sup> Beds. C.R.O. ABP/R 1, p. 19d.

<sup>66</sup> Beds. C.R.O. ABP/R 3, p. 101d.

the craft', but did not specify the craft to which he was referring.<sup>67</sup>

Both John Patenham of Bedford St Pauls (will dated the 6th of February 1512) and John Slade of Blunham (13th of December 1528) mention shops in their wills (John Patenham bequeathed his shops to one of his sons and declared that in default of heirs they were to pass to the 'chamber of Bedford').<sup>68</sup> And John Albany, also of Bedford St Pauls, who made a will on the 16th of February 1527, left to his son Henry, 'all such thyngs as longith to the occupacion of baker'.<sup>69</sup>

Occasionally, one testator provides information about the status of another; Anne Spencer of Cople, whose will was drawn up on the 14th of December 1524, describes herself as being 'late the wiff of Robert Spencer of Cople Gent'.<sup>70</sup> Robert Spencer's will, which gives no indication of his rank or occupation, is stitched in the probate register to his wife's will, although nearly five years separated the making of the two documents.<sup>71</sup>

Despite such references as these, it must be said that the information provided by the Bedfordshire wills on the occupation and rank of the testators under study is very sparse. What conclusions, if any, can be drawn from this evidence? The information from the wills under study does seem to support the findings of historians such as Vann and Wrightson, that testators could be drawn from a fairly wide social spectrum. It is impossible to tell whether there are any very poor testators represented in the registers. Some of the wills are brief and consist of a few, very small monetary bequests or gifts of stock or corn. Thomas Kynnygall of Northill for example, who

<sup>67</sup> Beds. C.R.O. ABP/R 1, p. 197.

<sup>68</sup> Beds. C.R.O. ABP/R 1, p. 178 and ABP/R 2, p. 111.

<sup>69</sup> Beds. C.R.O. ABP/R 2, p. 74d.

<sup>70</sup> Beds. C.R.O. ABP/R 2, p. 175.

<sup>71</sup> Beds. C.R.O. ABP/R 2, p. 174; see the case study of Robert Spencer's will on pp. 207-215 of this study.

made his will on the 30th of April 1500, asked to be buried in 'St Mary of Northill' and left for his mortuary 'according to the custom of the parish, two measures of wheat'. He also left two measures of barley to 'St Anne in the chapel above the door' (of the church of St Mary), two measures of barley to the bells, and 2d to the church of Lincoln.<sup>72</sup> However, in this will, as in all the other very small and apparently 'poor' wills, is a residual clause, and it is therefore impossible to assess the testator's wealth. A small will might be the product of the degree of ill-health of the testator, rather than of a lack of goods to bequeath.

A very high proportion (six hundred and eight (78 %)) of the Bedfordshire testators made a bequest of real property which supports the view that wealth and property were major determinants in will-making during the period under study. This figure must be regarded as a minimum since those testators who do not mention land in their will may have been content to let the descent of their real property follow the common law rules of inheritance (see page 168-169). As has already been observed, an incalculable proportion of testators who do not specifically mention real property in their will may have included such property in the 'residue'. Furthermore, it will be argued on page 171-172 that testators may not have mentioned all their real property in their will – only that which they did not wish to descend according to the rules of common law; it would therefore seem to be a fruitless exercise to attempt to estimate the total amount of property owned by a testator, or to judge his or her wealth using information derived only from a will.

One apparently neglected (and far from straightforward) method of evaluating the level of prosperity of the will-making population is provided by the customary payment of mortuary. Of the one hundred and forty-eight wills, recorded in the registers under study, which were made in or after 1530, when the Mortuary Statute

---

<sup>72</sup> Beds. C.R.O. ABP/R 1, p. 15.

had come into force (by which testators who died possessed of an estate worth less than ten marks were exempt from a mortuary payment), twenty-eight (18.9 %) of this group of testators included a reference to a mortuary payment (and of these, four described themselves as 'husbandmen'). This figure probably represents the minimum number of Bedfordshire testators whose estate was worth ten marks or more, since reference to mortuary payment may not have been made in the wills of all those who were eligible to pay (see page 58). On the other hand, it is possible to argue that some of those who did refer to their 'mortuary' or 'principal', may have been found to be ineligible once their estate had been valued. It has been observed on page 58 that the Bedfordshire testators or their testamentary advisors were generally aware of the change in the law concerning mortuary payments, but it is possible that some of those involved in will-making were less well versed in the laws pertaining to the document they were creating. The absence or presence of a reference to a mortuary payment in a will may therefore be less than satisfactory for establishing the wealth of a testator; it is only possible to assert, tentatively, that thirty (just under 20 %) of the testators under study, who made a will between 1529 and 1533, died possessed of an estate worth at least ten marks.

The information provided by the Bedfordshire wills on the family responsibilities of the testators under study is more abundant than the evidence of occupation and rank but is not entirely straightforward. A very high proportion of the Bedfordshire wills (seven hundred and fifty-nine (97.3 %)) provide evidence to suggest that the testator is or has been married, and this figure must be regarded as a minimum, since failure to mention a present or former spouse in a will does not necessarily indicate that the testator was unmarried. But what does this evidence imply? The health of the soul was surely as important for the unmarried as the married. It is therefore possible to argue that by the period under study, the discharging of family responsibilities was considered to be a major factor in the

making of 'a good end' and that a written will and testament was favoured by those individuals who were survived by dependants, as a reliable means of recording their wishes and intentions for their families and property. Where no conflict or dispute was expected it is possible that when a will was made, it was not always registered with the ecclesiastical court.

It has already been observed that 'infants' could own property; marriage was not necessary for the exercise of proprietary rights and there are a few Bedfordshire testators whose wills indicate that they are unmarried. Robert Laurence of Nether Stondon, who made his will on the 8th of February 1523, for example, did not make any reference to a spouse or to offspring of his own. This testator does not refer to any real property (although it may be included in the 'residue'), but left 'a cow bullok of ii yere age' to 'the iii childrene of William Laurence of Peggisden' (who is identified as the testator's brother and is appointed sole executor and is the residual beneficiary).<sup>73</sup> Most of the bequests can be described as 'pious'.

Also I bequeath x s for a trentall of masses to [be] sayd in Shytlington church for me and my friends ...

This will of a possibly single and landless man provides evidence to suggest that the spiritual aspects of a last will and testament had not entirely lost their significance in Bedfordshire in the early sixteenth century and that a man without dependants could still feel motivated to make a will.

There are other examples of wills in the registers under study in which only a spiritual determinant is apparent. John Gogeun of Haynes for example, whose will is dated the 6th of May 1501, made only the following bequests:

For principal as it requireth by custom used and occupied. To the high altar for tithes negligently forgotten: bushel of barley to the upholding of

---

<sup>73</sup> Beds. C.R.O. ABP/R 2, p. 7.

the sepulchre light [sic] to the torches i bushel of barley.<sup>74</sup>

John Gogeun named his wife as his executrix and 'John Hokyll of Haynes' as his overseer. Such wills may be few and far between, but they are a reminder that everyone who was not prohibited from making a will, and who had some regard for the teachings of the Church, did have a reason for will-making in the early sixteenth century.

Although the Bedfordshire testators were apparently urged or advised to establish their right to testamentary capacity by recording that they were in possession of their mental faculties and sound in memory, none of them felt a similar need to record their age. This may indicate that most of the testators were so obviously above the minimum age for will-making that a dispute over the validity of the will on this count was unlikely to occur (whereas a dispute over the mental fitness of the testator may have been relatively easy to instigate by a disgruntled heir or would-be beneficiary). On the other hand, this omission may indicate that in the early sixteenth century few individuals were aware of their exact age and therefore could not record this detail in their wills.<sup>75</sup>

There is, however, some indirect evidence in the Bedfordshire wills of the age structure of the will-makers under study. Four hundred and ninety-nine (64 %) of the testators under study include information in their wills which indicates that they are survived by offspring. It is not possible, in most instances, to assess the ages of the 'children' and to establish how many had reached 'full age' at the time the wills were

---

<sup>74</sup> Beds. C.R.O. ABP/R 1, p. 34.

<sup>75</sup> Although, as will be observed in chapter seven, some of the Bedfordshire testators did state a numerical age at which they wished a beneficiary to enter land. It is possible that a particular age was suggested to the testator by their testamentary scribe or advisor for this purpose, but still, it does indicate that the beneficiary would be aware of his or her numerical age. For a discussion of attitudes towards age in the sixteenth century see Thomas, 'Age and Authority', 205-247.

written. Some testators make it clear that they have minor children for whom to provide; Roger Aleyn of Eton, for example, who made his will in the year 1520 (full date not given) left various moveable items to his son James but asked that his own brothers should have the keeping of the property until James was seventeen years of age, when they were to 'deliver to the sayd child all thyngs above rehersed'.<sup>76</sup> And William Cokyn of Bury Hatley, whose will is dated the 3rd of February 1527, asked that his wife Kathrin should have:

the keyping of my childrene and that she fynd my sonne ... to scole or other convenient lernyng duryng xx yerys next after my decease.<sup>77</sup>  
(This will was proved within a month of being made).

Others clearly have sons who are leading 'independent' lives in that they are living separately from their parents and farming their own parcel of land (although that land may still have been in their father's ownership). William Buttler of Lidlington, for example, who made his will on the 3rd of October 1522, left to his son Henry 'the house in which he lives'.<sup>78</sup> However, it will be observed on page 199 that the Bedfordshire testators varied in their opinion of the age at which a beneficiary should enter upon real property, and that an individual as young as fifteen could be expected to take possession of his inheritance. At the other extreme, a testator could prevent a beneficiary from entering his inheritance until he was nearly thirty years of age.<sup>79</sup>

Age at inheritance could apparently be influenced and delineated by a variety of factors including the personal circumstances and whim of the testator, the gender of the beneficiary, custom, Roman law and common law. Even if the age at inheritance envisaged by the Bedfordshire testators could be said to reflect the age at

---

<sup>76</sup> Beds. C.R.O. ABP/R 2, p. 16d.

<sup>77</sup> Beds. C.R.O. ABP/R 2, p. 75d.

<sup>78</sup> Beds. C.R.O. ABP/R 2, p.3.

<sup>79</sup> See pages 201-202 of this study.



which these same individuals would have been willing to transfer property to their children and allow them some measure of independence, the historian is still left with a wide age span for these 'children'.

Furthermore, as will be observed on page 171-172, a testator might not mention all his children in his will and might omit the eldest son who was the heir at common law; thus, those who mention only minor children may also have been survived by adult offspring; testators who fail to mention any offspring cannot be assumed to have been childless. Some of the offspring mentioned by testators are clearly married, but since the legal minimum age for marriage during the period under study was twelve for girls and fourteen for boys, a testator with married children could still be fairly 'youthful' even by the standards of the time. There is evidence to suggest that the average age at marriage in the early modern period may have been considerably above the legal minimum but it would be unwise to use evidence of married offspring to assess the age of testators too closely.<sup>80</sup>

One hundred and eighteen (15.17 %) of the Bedfordshire testators mention one or more grandchildren in their will. This evidence is of some general value to those historians who are interested in establishing the average life-span of early sixteenth-century individuals, but does little to establish the age of the testator or his children within narrow parameters.

Some evidence of the minimum age of at least one of a high proportion of the Bedfordshire testators' offspring is provided by the three hundred and fifty-six (50.5 %) of male non-clerical testators who appointed a son as an executor. Two hundred and twenty-nine (31.9 %) of all non-clerical testators named a son or daughter as an executor. The minimum legal age at which an individual (of either

---

<sup>80</sup> Macfarlane, *Marriage and Love* ..., pp. 214-216.

sex) could be an executor was seventeen.<sup>81</sup> If it is accepted that those testators who appointed offspring as executors were aware of, and willing to comply with, this aspect of the law, then at least half the male non-clerical testators had a son of at least seventeen years of age at the time the will was written.

The information provided by the wills under study on the age structure of the will-making population of sixteenth-century Bedfordshire is therefore fairly sparse and difficult to evaluate.

Only sixty-three (8 %) of the testators under study were female, and the majority, fifty-eight (93 %), of this group identify themselves as widows. The wills of single women do exist; in the records of the prerogative court of Canterbury for example, is the will of Elizabeth Gostwick 'maiden' of Willington in Bedfordshire (dated the 14th of January 1547)<sup>82</sup> but none of the wills under study is clearly that of an unmarried female. As was probably the case with unmarried men, the wills of single women may have been less likely to be presented at, or registered with, the probate court. Since proprietary rights were not dependent on marriage and the goods bequeathed by unmarried testators must surely have been the subject of dispute among relatives and other interested parties, this argument is not entirely satisfactory. It is possible that the widowed spouse and the offspring of a testator were considered to be most capable of successfully disputing the terms of a will, while more distant relatives by whom a single individual would be survived, enjoyed less influence in this respect.

The Bedfordshire wills do not provide enough specific information on the rank and occupation of the testators to allow a detailed evaluation of their social

---

<sup>81</sup> Holdsworth, *A History* ..., vol. iii, p. 511.

<sup>82</sup> P.C.C. PROB 11/32, fo 17, p. 126d (transcribed in McGregor, *Bedfordshire Wills* ..., p. 183).

distribution to be made, although there is evidence to indicate that wills proved in the court of the Archdeacon of Bedford in the early sixteenth century were made by individuals from a fairly wide social spectrum. The high proportion of married, landowning testators with offspring does indicate that wealth and family responsibilities were major determinants in will-making during the period under study, but the existence of some purely 'spiritual' wills by testators without family commitments (according to their will), reflect the ultimately religious purpose of making a testament. Even where the discharging of family responsibilities by the distribution of personal and real property is apparently the major purpose of the will, this was in itself an integral part of the testator's spiritual preparation for death.

Since all those who were not prohibited by some rule of law from making a will had a spiritual and religious motivation for will-making, the high proportion of testators with family responsibilities may reflect the age and circumstances under which wills were frequently written (that is, during mortal illness, see chapter three) and thus may indicate that those who survived infancy in the early sixteenth century were likely to survive until they had produced children (and even grandchildren) of their own. The apparently small proportion of the Bedfordshire population whose wills were recorded in the records of the court of the Archdeacon of Bedford between 1500 and 1533 does not, however, allow any firm conclusions to be drawn on this point.

The size and social distribution of the will-making population, as it is represented in documents available to historians, may have been determined by the cost of the process of will-making and of probate, rather than by the existence of determinants such as possessions and family responsibilities. It is the relative wealth of the testator which allowed his or her will to be proved and registered in the probate records of an ecclesiastical court, but this fact should not be confused with the primary motivation for will-making which was not necessarily determined by worldly

circumstances.

### **The Geographical Distribution of Testators**

The geographical distribution of testators within the county can, with reasonable confidence, be interpreted as indicating the areas in which the more prosperous individuals (that is, sufficiently prosperous to both make and register a will and testament) were located.

Map 2 shows that the highest concentration of testators were inhabitants of the towns of Bedford, Luton and Dunstable, where a relatively high density of population apparently not only had the means to accumulate enough money to allow the making and proving of a will, but could also either acquire the skills to write the will themselves, or could call upon the skills of others. However, some less obviously urban parishes also reveal a high incidence of will-making during the period under study; Potton, in the east of the county, for example, although *not a borough*<sup>83</sup> can perhaps be explained in the same terms as the town parishes, being a thriving market centre with a school.<sup>84</sup> Stevington, in the north of the county and Shillington in the south-east are less readily explainable.

It should be observed that the death-rate must also have had an influence on will-making (although, as has been observed on page 115 of this study, the correlation between mortality rates and numbers of registered wills may be very difficult to evaluate) and thus Stevington and Shillington may have suffered badly in this respect in the early sixteenth century (as indeed, could the densely populated town parishes).

---

<sup>83</sup> Godber, A History of Bedfordshire, pp. 155-163.

<sup>84</sup> William Hayle, a yeoman of Marston Moretaine, who made his will in the year 1530 (full date not given) declared that his executors 'shall fynd my son's son to school at Potton by the space of eleven yere'. Beds. C.R.O. ABP/R 3, p. 12.

It is interesting to note that the parishes to the south-east of, and adjacent to, the town of Bedford were more heavily represented by testators than were those bordering the town to the north and east (Godber has suggested that the heavy clay land to the north of the town may have prevented the farmers of that area from becoming prosperous).<sup>85</sup> Elstow was particularly well-represented, and again, the proximity of Bedford and the presence of Elstow Abbey which, it has been suggested, had become 'thoroughly secularised' by the 1530s and may have attracted a high proportion of prosperous widows to settle in the parish,<sup>86</sup> but which still maintained an educational function<sup>87</sup> may also have provided the ideal conditions, or at least the necessary ingredients, for will-making and registration.

As the parishes to the north-east of Bedford also suggest, proximity to an urban or market centre was not in itself sufficient to prompt, or allow, the making and registering of a will. However, the distribution of testators in early sixteenth-century Bedfordshire does indicate (with one or two anomalies) that prosperity was a key factor in the making and proving of a will, and that a reasonably thriving market centre could provide the necessary conditions for will-making.

Godber's use of the existence of will-makers in sixteenth-century Bedfordshire (together with the number of tax-payers in 1581/82 and 1597) to assess the relative prosperity of individual parishes, reveals a similar pattern to that revealed by the wills under study, and Godber notes that the most striking is the medium-sized parish of Lidlington, which Map 2 of this study shows to have been heavily represented by

---

<sup>85</sup> Godber, A History of Bedfordshire, p. 215.

<sup>86</sup> Marks, 'The Dissolution of the Monasteries,' p. 4.

<sup>87</sup> Elstow Abbey was known to have an educational function in the medieval period, see for example, Eileen Power, Medieval English Nunneries, Cambridge, 1922, pp. 262-263; The will of Agnes Butt of Elstow, dated 11 October 1524, includes a bequest to the 'four children who read the lessons'. Beds. C.R.O. ABP/R 2, p. 37.

testators in the early decades of the century.<sup>88</sup> However, the Bedfordshire wills proved in the court of the Archdeacon of Bedford between 1500 and 1533 show that Lidlington was only one of a group of parishes well-represented by testators (Wootton, Marston Moretaine and Lidlington were each represented by between sixteen and twenty testators over the thirty-three year period) and the map demonstrates clearly that Lidlington may have represented the southern-most edge of a prosperous region to the south-west of Bedford.

---

<sup>88</sup> Godber, *A History of Bedfordshire*, pp. 214-216. Unrepresented parishes may have included will-making parishioners outside the period under study. For example, a Thomas Blyth of the parish of Moggerhanger made a will on 5 October 1535 and William Tele of Milbrook made his will on 11 September 1535 (Beds. C.R.O. ABP/R 4, pp. 10d and 37 respectively).

## PART TWO:

### BEQUESTS OF REAL PROPERTY

It has been suggested in chapter two, that by the opening of the sixteenth century, the motivation for will-making was still spiritual, but that the spiritual impetus and its application had widened from a purely pious focus to include the discharging of family responsibilities, in order to make proper preparation for death and achieve 'a good end'.

This discharging of responsibilities normally involved the disposition of some or all of the testator's property. Since land was a valuable resource, and the future well-being of a testator's family often depended upon the continued prosperity of real property, the devising of land formed an important element of will-making for many testators. The disposition of real property may well have been the greatest source of anxiety (apart from the welfare of his soul, but the two were not unrelated) to a dying man.

It has been observed in chapter four that six hundred and eight (78 %) of the Bedfordshire testators used in this study made a bequest of real property in some form, either as part of an integrated will and testament or in a separate *ultima voluntas*. This section of the study will examine these bequests of land with particular reference to the utility of wills of land to the study of inheritance, and will also discuss the purposes for which the use was employed and how the device affected the nature and function of wills and testaments in the opening decades of the sixteenth century.

## **CHAPTER FIVE**

### **THE INHERITANCE OF LAND IN THE EARLY SIXTEENTH CENTURY**



## The Rules of Inheritance

During the period under study, the descent of all freehold and most copyhold land was expected to follow the common law rule of primogeniture by which the entire estate passed to the eldest son. Where no male descendants survived, females of equal degree normally inherited together as co-heiresses. A dead descendant was represented by his or her descendants and this aspect of the rule overrode the preferences for males; the daughter of a dead eldest son would normally exclude a landowner's surviving younger son.<sup>1</sup> A widow could claim her right to dower, but for her life only, and this rule applied only to freehold land; according to Blackstone, copyhold estates were not liable to dower unless by the special custom of the manor. Furthermore, a widow's entitlement was limited to one-third of the freehold land of which her husband died seised.<sup>2</sup> Ascendants were excluded from inheriting under the rule of primogeniture; when a landholder was not survived by descendants, his real property could not pass to his mother or father, but would escheat to the lord.<sup>3</sup>

The rule of primogeniture was not, however, practised universally; in some areas the descent of land was governed by customary rules which differed from those in common law. In Kent and some smaller areas, for example, free socage lands were generally subject to the custom of gavelkind by which they were divided equally among all surviving sons.<sup>4</sup> Some copyhold lands, those held by copyhold of inheritance, could also descend in gavelkind or be partible amongst all children. In some parts of the country the custom of ultimogeniture or 'borough English' survived,

---

<sup>1</sup> Houlbrooke, The English Family, p. 229; Pollock and Maitland, The History ..., vol. ii, pp. 420-428; Plucknett, A Concise History ..., pp. 566-568.

<sup>2</sup> Pollock and Maitland, The History ..., vol. ii, pp. 421-422.

<sup>3</sup> Pollock and Maitland, *op. cit.*, vol. ii, pp. 285-294.

<sup>4</sup> Houlbrooke, The English Family, p. 229; Pollock and Maitland, The History ..., vol. ii, pp. 271-272.

by which the land passed to the youngest son.<sup>5</sup>

The development of the rule of impartible succession can be explained in the terms of the needs of feudal society. As Maitland observed, when the law decides that the whole land shall go to one son, and that his brothers shall have nothing, it is not thinking merely of the dead man and his sons, it has in view one who is a stranger to the inheritance, some king or some lord, whose interests demand that the land shall not be partitioned. Thus:

The great fief which is both property and office must if it be inherited at all, descend as an integral whole; the more or less precarious rights which the unfree peasant has in a tenement, must if they be transmissible at all, pass to one person.<sup>6</sup>

Primogeniture developed first in lands held in return for military service where the inheritance of the estate by the eldest son had obvious advantages for the lord. Ultimogeniture, on the other hand, was most prevalent among villein tenements (in Bracton's day the appearance of this rule raised a presumption that the tenements which it governed were not free) possibly for economic reasons. If the land was given to the youngest son all the brothers of a family could dwell together until all were capable of labouring; were the land to be given to the eldest son, he might marry and produce a new family while his younger brothers were incapable of working.<sup>7</sup> The areas in which impartible inheritance developed most strongly therefore, were generally speaking those which underwent heavy manorialisation, of which Bedfordshire was one.<sup>8</sup>

---

<sup>5</sup> Pollock and Maitland, The History ..., vol. ii, pp. 279-281.

<sup>6</sup> Pollock and Maitland, *op. cit.*, vol. ii, pp. 262-263.

<sup>7</sup> Pollock and Maitland, *op. cit.*, vol. ii, p. 280.

<sup>8</sup> Godber, A History of Bedfordshire, pp. 30-31; Howell, 'Peasant Inheritance

However, the development of the device of the use during the medieval period diminished the importance of the common law rules governing the descent of real property, and provided landowners with the freedom to dispose of their property at death to beneficiaries other than the heir at common law, even in areas where primogeniture was normally the rule.

## The Use

By employing the device of the use<sup>9</sup> a landowner could transfer the legal title to his or her property to an intermediary or group of intermediaries (known as *feoffees to uses*) who would hold the land to the use of the feoffor or to the use of a third party or beneficiary named by the feoffor, known as the *cestue que use*.

Uses could be declared at the time of feoffment, verbally or in writing, or an agreement could be made that the uses would be those declared in the testator's will; thus an individual's ownership could survive through the directions given to intermediaries during his lifetime. Holdsworth has noted that sixteenth-century law books indicate that the major reason for the popularity of the use was the undevisability of real property.<sup>10</sup> Bean has suggested that there were two particular advantages to be gained by a testator who employed the use:

First, he was able to provide his executors with the revenues needed for the performance of their duties, including the payment of debts. Second, he was in a position to make grants of land to his widow and younger

---

Customs ...', p. 117.

<sup>9</sup> The origins, development and mechanics of the use are comprehensively discussed by Holdsworth, A History ..., vol. iv, pp. 410-466; a more concise account of the device of the use is provided by Simpson, A History of the Land Law, pp. 174-207.

<sup>10</sup> Holdsworth, A History ..., vol. iv, p. 438; Simpson, A History of the Land Law, p. 182.

sons, or raise marriage portions.<sup>11</sup>

The feoffor retained the beneficial enjoyment of the property (that is, continued to live on, and farm the land to his own profit), *feoffees to uses* were simply the recipients of the seisin or legal title to the property, and their function was often entirely passive, except where they were instructed by the feoffor to reconvey the lands to a third person.<sup>12</sup>

The *cestue que use* was, therefore, at the mercy of the intermediaries and a fraudulent feoffee could refuse to enact the uses or alienate the land to which he had title against the wishes of the feoffor. Under the common law doctrine of estates a landowner was protected through the seisin of his property, and since, where the use was employed, the seisin was vested in the feoffee or feoffees, the *cestue que use* had no recourse to the common law courts should his feoffees act against his wishes. The inability of the common law courts to uphold uses meant that the person who made a feoffment to uses:

was clearly reposing a trust or confidence in the feoffee, which it was unconscionable, though not illegal for him to break.<sup>13</sup>

It was to provide the feoffor and the beneficiaries of a use with some protection against fraudulent feoffees that the court of Chancery came to 'develop a body of equitable principles around the institution' (of the use). J.L. Barton has noted that bills in Chancery filed by *cestue que uesent* have been preserved from the end of the

---

<sup>11</sup> Bean, English Feudalism, p. 142; Because, under common law rules, real property passed straight to the heir and had nothing to do with the executor, it could not be used by the testator's representative to pay his or her debts unless the property concerned was the subject of a use. Pollock and Maitland, The History..., vol. ii, p. 336.

<sup>12</sup> Simpson, A History of the Land Law, p. 174.

<sup>13</sup> Simpson, *op. cit.*, pp. 175-176.

fourteenth century onwards and that:

it appears that as early as 1379 a beneficiary [of a use] could proceed to Chancery with sufficient prospect of success for his opponent to petition parliament about the case.<sup>14</sup>

The Chancellor could use the threat of imprisonment against dishonest feoffees and:

his mode of procedure by interrogation under oath was a potent method for discovering the nature and scope of the trust placed in the feoffee, and whether or not his behaviour was conscionable.<sup>15</sup>

The disadvantages of the use did not prevent the device from becoming popular with all levels of society. Bean has observed that the most remarkable illustration of the popularity achieved by uses at the close of the fifteenth century is to be found in the parliamentary statute of 1504, which provided the lord with the right to enter upon lands conveyed by a bondman to feoffees (see page 109). Bean has rightly observed that the need to legislate in this way:

shows the practice of enfeoffing to uses had permeated the lowest ranks of the peasantry.<sup>16</sup>

Although for much of the medieval period the view of the common law courts was that uses were nothing in law and were not a form of property at all, merely a trust which could be broken without legal consequences (see above, page 143) a statute of Richard the Third enacted in 1484 threw this view into confusion, since it enabled the *cestue que use* to make a feoffment binding in law. As J.H. Baker observes, this act had a profound effect on the law and familiarized the common law

<sup>14</sup> J.L. Barton, 'The Medieval Use', Law Quarterly Review, lxxxi, 1965, 568.

<sup>15</sup> Simpson, A History of the Land Law, pp. 175-176.

<sup>16</sup> Bean, ...English Feudalism, pp. 178-179.

courts with titles to land traced through uses.<sup>17</sup> From this point the common law courts began to lay down rules governing uses and wills and:

perhaps did more than a court of conscience could have done to assimilate the position of a *cestue que use* to that of the common law tenant in fee.<sup>18</sup>

From the early decades of the sixteenth century there was disagreement about the legal position of the use. Some lawyers argued that uses should be recognized at common law, others viewed the use as a fraudulent device which should be abolished, since it allowed the evasion of feudal dues<sup>19</sup> and also facilitated the devise of real property by will; Martin Hare of the Inner Temple declared in 1538 that:

a use in the beginning was invented under the intention of making a fraud on the common law that is to make declaration of a will and so to defraud the right heir and to oust the wife of her dower or to oust tenancy by the curtesy.<sup>20</sup>

The attempts to settle the position of the use culminated in the Statute of Uses and the Statute of Enrolments of 1536 which, with the intention of abolishing the separation of beneficial enjoyment from the legal title to property, removed the seisin from the feoffees and vested it in the *cestue que use*.<sup>21</sup> Although there was no actual mention of wills in the body of the Act, Baker has observed that:

it is clear from the preamble that the abolition of the power to devise was

---

<sup>17</sup> 1 Rich. III, c.1; J.H. Baker 'Uses and Wills', Selden Society, xciv, 1978, 196.

<sup>18</sup> Baker, *Ibid.*

<sup>19</sup> Simpson, A History of the Land Law, pp. 182-183; Bean, ... English Feudalism, pp. 215-540.

<sup>20</sup> Baker, 'Uses and Wills', 199, citing Brit. Lib. M.S. Harley 1691, fo 100 (a moot of c. 1533).

<sup>21</sup> Baker, 'Uses and Wills', 199.

a major object,

and Edward Hall, a Reader of Grays Inn, interpreted the Act as meaning:

that no man myght declare his wyll of no parte of his land.<sup>22</sup>

The outcry caused by the abolition of the power of the devise and the resulting return to compulsory primogeniture which the Statute of Uses effectively brought about, resulted in the Statute of Wills of 1540 by which most real property became devisable at common law.<sup>23</sup>

---

<sup>22</sup> Baker, 'Uses and Wills', 202; H. Ellis (ed.), E. Hall, 'Chronicle'. 1809, p. 785.

<sup>23</sup> 32 Hen VIII, c.1; Holdsworth observed that 'The Wills Act of 1540 allowed those whose lands were held by socage tenure, whether in chief or otherwise, full and free liberty, power and authority to give, dispose, will and devise, as well by his last will and testament in writing, or otherwise by an act or acts lawfully executed in his life, all his hereditaments at his free will and pleasure'. A History..., vol. iv, p. 465. As Simpson has noted, those taking land by devise under the statute were to be liable for feudal dues, but this provision was eventually evaded by a device whereby a landowner could convey lands to a friend to his own use, the use in his favour being executed in the form of a legal fee simple determinable on his death. A History of the Land Law, p. 191. The Statute of Wills and the devisability of real property at common law did not, therefore, obviate the need of the individual to employ the use.

**CHAPTER SIX**

**THE BEDFORDSHIRE WILLS AND THE USE**



The device of the use has largely been examined by historians without detailed reference to a specific group of wills.<sup>1</sup> What information can the Bedfordshire wills provide about the mechanics of the use and the interaction of the device with the last will during the early sixteenth century?

Fifty (less than 9 %) of the Bedfordshire testators who included a bequest of real property in their will made any direct or specific reference to the use, or to those involved in the application of the device, the *feoffees to uses*. The question must be asked – were all bequests of real property in the wills under study declarations of uses? In the earlier medieval period some bequests of land were successfully enacted through the consent of the heir at common law<sup>2</sup> and it can be argued that bequests of realty which were not the subject of an enfeoffment may still have been enacted after the use became popular and subject to the principles of equity.

There is some evidence in the wills under study which may at least cast doubt upon an assumption that all wills of land were declarations of uses. Richard Rabbett of Poddington, whose will is dated the 22nd of September 1511, made a fairly lengthy testament, but his separate will of land consists of only one bequest, 'To son John and assigns for ever a croft of Hertesgrene' (after the death of the testator's wife)<sup>3</sup> With so little information (as to the tenure of the property, or the seniority of the named son) it is impossible to interpret the bequest precisely. However, the brief character of the bequest, which conveys the impression that it was included in the will as something of an afterthought, does raise the question of whether or not the property

<sup>1</sup> See for example, Bean, *...English Feudalism*, chapters three to six; Pollock and Maitland, *The History ...*, vol. ii, pp. 228-239; Holdsworth *A History ...*, vol. iv, pp. 407-480.

<sup>2</sup> Sheehan, *The Will ...*, p. 281; Pollock and Maitland, *op. cit.*, vol. ii, p. 329.

<sup>3</sup> The will of Cuthbert Cutlat of Eaton (Bray) refers to uses being included in a separate document from the will, in the form of a deed poll (Beds. C.R.O. ABP/R 1, p. 246); Holdsworth, *A History ...*, vol. iii, p. 538, records another such reference in an early sixteenth-century will.

mentioned was enfeoffed, or whether the testator was simply completing his will and testament, and preparation for death, by hurriedly recording his wishes as to the descent of the specified croft. Richard Rabbett's will was proved within a month of being made and thus was almost certainly drawn up when the testator was on his deathbed. This in itself does not exclude the possibility that the will was a declaration of uses. It has been observed in chapter three of this study that a 'pool' of individuals from whom executors and feoffees might be chosen were often present at the making of a last will and testament.

The will of Agnes Radwell of Kempston, made on the 10th of November 1533, indicates that enfeoffment of land could take place when the feoffor came to make his or her will during mortal illness; Mrs Radwell left to her younger son John the house that she lived in 'called Penylands', and declared 'whereupon I make surrender into the hands of Edward Lenton to the use of the said John'.<sup>4</sup>

Furthermore, land could be enfeoffed long before the testator came to draw up his will and be mentioned only cursorily in the will itself (see page 153). However, it is at least possible that some testators came to their deathbed without having made preparation, in the form of the use, to devise real property, but who felt a need to record their wishes concerning the disposition of their realty, whether or not these wishes were likely to be carried out with the co-operation of the heir at common law.

One other Bedfordshire will provides information which may indicate that some bequests of land were indeed carried out by the consent of the heir rather than necessarily by the device of the use. Thomas Skawne of Chalgrave, who made his will on the 26th November 1531, left his house 'in Northrow', which the testator had 'by gift of my father', and 'now by gift and assent of my brother', to his own son

---

<sup>4</sup> Beds. C.R.O. ABP/R 3, p. 124d.

John.<sup>5</sup> The only explanation for such wording would seem to be that the testator's father had bequeathed the property to him, and that this bequest was fulfilled with the consent of the heir at common law. If the property had been subject to use, the 'gift and consent' of the testator's brother would not have been required. However, it is possible that the house referred to had been given to the testator for his own lifetime before his father's death and the heir at common law made the gift an absolute one. Again, the information provided by the wills raises questions of interpretation for the historian; an understanding of these questions, even where the answers to them cannot be established with any certainty, will at least enhance the understanding of wills as sources of historical evidence.

Some of the real property mentioned in the Bedfordshire wills may have been held in burgage tenure and was thus devisable by custom. However, there is evidence in the wills under study to indicate that burgage property could also be enfeoffed. Thomas Knecht of Bedford, for example, whose will has been quoted on page 87, refers to his feoffees (see below, page 157) and also provides sufficient information to show that at least some of the realty he is devising is situated within the borough of Bedford.<sup>6</sup> It is possible that the property which Thomas Knecht had enfeoffed was not held in burgage tenure. However, it is also possible that whatever the tenure of the property, the testator found it necessary to employ the use so that he could impose certain conditions on his beneficiaries. Some of the bequests of real property in Thomas Knecht's will are made on condition that the recipient does not 'vex or trouble' the executors. Furthermore, the testator provided for certain eventualities, which may not have been possible without recourse to the use. For example, Thomas Knecht bequeathed 'a tenement called the forge and a close' to Gabriel Knecht (whose relationship to the testator is unclear) but declared that if Gabriel became 'a

---

<sup>5</sup> Beds. C.R.O. ABP/R 3, p. 53.

<sup>6</sup> Beds. C.R.O. ABP/R 3, pp. 106d-109.

religious', then the property was to be sold. The devisability of burgage property may not, therefore, have obviated the need to employ the device of the use, which provided the individual with a flexible means of controlling the beneficiaries of real property, and the descent of that property, which was not otherwise achievable.

In the wills under study references to the use, or to *feoffees to uses*, range from the detailed and elaborate to the very brief. Cuthbert Cutlat of Eaton for example, who made his will on the 4th of July 1521, declared that:

I will and bequeath to Alys my wiff all my purchased lands and tenements and all such as be named ... in my new dede of feoffment with meadows lsis pasturys closys rents ... and all my other land and tenements beying in feoffment in eyton and teternew of her liff and after her decease to remayn all holey ... unto John Cutlatt my Sonne ... Also I will that my sayd feoffees whose namys be Cuthbert Jenkyn / Henry George / Richard Buckmaster Edmond Alen and Hugh Alen in my said dede of feoffment shall stand enfeoffed in the sayd lands and tenements with other the premises with appurtenances aforesaid unto the behoff and use of this my sayd will to be fulfilled and to the use of all the sayd remainders aboverhersed ...<sup>7</sup>

At the other extreme, Richard Webbe of Houghton Regis whose will is dated the 5th of May 1506, left his lands and tenements to his wife for life and then to his son, Richard. If Richard died, the property was to pass to the testator's younger sons, and if they died, the testator declared that the lands and tenements were to pass to his daughter, Agnes. It is only in reference to the possibility of his daughter's inheritance of the property, that Richard Webbe makes specific (but brief) mention of his feoffees; he states that if Agnes does inherit, she is to pay his 'feoffees and executor

---

<sup>7</sup> Beds. C.R.O. ABP/R 2, p. 97.

eight pounds'.<sup>8</sup> These passing references to the use, or to feoffees, do of course indicate that uses could be declared in a will without formal wording or legalistic terminology.

As has already been observed on page 72 of this study, it would be wrong to assume that all the information concerning a bequest of real property is included in the will and testament and where the use was employed, a separate document from the will, called an indenture, was sometimes drawn up at the time of the enfeoffment (and before the declaration of uses in a last will), in which the terms of the use were rehearsed. Several of the Bedfordshire testators make reference to a separate deed or indenture; Cuthbert Cutlat of Eaton, for example, whose will has already been quoted on page 151 of this chapter, declared that:

I will and bequeath to Alys my wiff all my purchased lands and tenements  
and all such as be namyd ... in my new dede of feoffment with meadows  
Isis pasturys closys rents ... as they [are] more playnly rehersed and  
namyd in the dede of feoffment ...<sup>9</sup>

Bean has suggested that a deed or indenture of feoffment became more popular as the instructions to *feoffees to uses* became more detailed and complicated.<sup>10</sup> No such deed or indenture is recorded in the probate registers under study, which suggests that the interest of the ecclesiastical courts in a will of land was limited to the registration of the broad intention of the testator as to the disposition of part or all of his real property.

There is some evidence from elsewhere to suggest that where the instructions in the will differed from those in the indenture, those declared in the latter document

---

<sup>8</sup> Beds. C.R.O. ABP/R 1, p. 81d.

<sup>9</sup> Beds. C.R.O. ABP/R 1, p. 246.

<sup>10</sup> Bean, *... English Feudalism*, p. 149.

would be upheld. Bean has noted a case heard by the Chancellor in 1439, which was decided in favour of the terms declared in an indenture made four years before the feoffor's last will and testament, and in which the feoffor's instructions were different from those in the former document.<sup>11</sup> A will in which uses were declared sometimes formed, therefore, only part of the mechanism by which the testator's real property was to be disposed after his or her death.

There must have been many factors which influenced the type and wording of a will of real property and references to the device of the use. The wealth and health of the testator are perhaps the two most obvious determinants in this matter, but testamentary advisors may not have been without influence. Thomas Lucy of Roxton, who made his will on the 17th of December 1527, declared that:

Where Thomas Swift and Thomas Sexton were and be enfeoffed and state [sic] to them delivered accordyng to the use of me the same Thomas Lucy and of myn heyrys shall stand seased in full strength to the use of Thomas Hunt and his heyrys and assynges accordyng to pmesse and sale to the sayd Thomas Hunt aforemade.<sup>12</sup>

And Thomas Stoughton, a husbandman, also of Roxton, whose will is dated the 31st of March 1528, employed a very similar wording to that of Thomas Lucy to declare the use:

... said feoffees shall stand from henceforth in full strength and power ...<sup>13</sup>

In both wills, Sir Thomas Stoughton, 'parish priest' is named first in the list of witnesses and may have been the scribe of the will in each case. And the declarations

---

<sup>11</sup> Bean, ... English Feudalism, p. 170.

<sup>12</sup> Beds. C.R.O. ABP/R 2, p. 145.

<sup>13</sup> Beds. C.R.O. ABP/R 2, p. 140.

of uses made by William Fossey and Thomas Norrett, both of Houghton Regis, whose wills were made within a month of each other in 1524, also use very similar wording:

I the sayd William Fossey will by thaurtorite [sic] of this my last will that all such feoffes now standyng and to be enfeoffed by my sayd feoffes in all such lands and tenements with appertenances sett lying and beyng within the parissh and ffeld of Kyngshoughton Dunstable and Chalton or els were now standyng enfeoffed or to stand enfeoffed [of?] these premisses with appertenances to myn behalff and use shall stand so seased and enfeoffed to unto the use and performing of this my last will ...<sup>14</sup>

and

... I the sayd Thomas Norrett will be thatorite of this my present testament and last will that all such feoffees now standyng enfeoffed and to be enfeoffed by my sayd feoffers in all such lands and tenements with all ther appertenances sett lyying or beyng within the toways of Kyngs houghton dunstable or els where noe standyng enfeoffed in the premisses with appertenances to my behalff and use shall stand so seased an enfeoffed unto the use and performyng of this my last will...<sup>15</sup>

In both wills a 'William Fossey' is named at the conclusion of the documentation; in William Fossey's will as supervisor, where he is identified as a vicar, and in Thomas Norrett's will as a witness. It must be said however, that in each case the cleric mentioned may not have been the scribe of the will and the wording of these wills may rather be the result of the influence of a lawyer or notary who is not mentioned in

---

<sup>14</sup> Beds. C.R.O. ABP/R 2, p. 54d.

<sup>15</sup> Beds. C.R.O. ABP/R 2, pp. 57-59.

the document.

Since so few of the Bedfordshire testators make any specific reference to, or bother to name their *feoffees to uses* in their will, no comprehensive survey of the identity of feoffees is possible. Bean has suggested that:

It was desirable that at least some of the feoffees were also executors of the cestue que use since in their latter capacity they would be supervised by the ecclesiastical authorities, and thus some indirect, however unofficial, control over their activities would exist.<sup>16</sup>

Only six of the Bedfordshire testators identify their *feoffees to uses* by name and half of this group name a feoffee who is also appointed as an executor. This number is clearly a minimum, the frequency of the term 'my executors and feoffees' (within the limited group of testators who make any reference to feoffees) may indicate that executors and feoffees were frequently interchangeable. Whatever the advantages of appointing the same individuals as both feoffees and executors, the dual role of some appointees may in some instances have led to complication and a conflict of interests.

Which office enjoyed the greater power and authority? There would seem to be no clear-cut, theoretical answer to this question. The seisin of the property was vested in the *feoffees to uses* who were bound by conscience and by the principles of equity to convey the enfeoffed property to a third party as instructed by the testator. Where these instructions appeared in a last will, the enactment of which was the duty of the executor, the boundaries between the two offices can be said to be at once interdependent and, at times, conflicting.

This further example of shifting and uncertain boundaries between duties, principles, laws and jurisdiction, where early sixteenth-century wills were concerned,

---

<sup>16</sup> Bean, *... English Feudalism*, p. 154.



is reflected in the wording of some of the documents under study. Robert Spencer of Cople, whose will is dated the 20th of March 1520, declared that his feoffees were to 'suffer' his executors to take the issues and profits of lands in Southill, and in the parish of Blunham, together with the profits of land in Honeydon, which the testator's son-in-law 'Batell', occupied, 'only except and until they may therewith pay my debts and perform my bequests following...'<sup>17</sup> The *feoffees to uses* in whom the legal title of the property was vested, were apparently expected by this testator to enjoy ultimate authority over his realty which was the subject of a use, and the executors' influence (and therefore the influence of the ecclesiastical authorities) over the feoffees was somewhat limited, and possibly non-existent. And John Hardyng of Harlington (will dated the 12th of April 1523) left two tenements, together with their land and appurtenances to William Hardyng (whose relationship to the testator is unclear) when he reached 'lefull age admitted by the law to enjoy them', and the testator declared that if his wife died during the 'nonage' of William Hardyng, then his executors were to have the guiding of William, and were to 'sett him to scole'. They were also to have the 'rule and governing' of the two tenements left to William, which they were to maintain, keep in repair and from which they were to receive the rents. John Hardyng further declared that his executors were to:

make every year a true accompt before my feoffees on saint Katherine's day in the church of our blessed lady of Harlington ...<sup>18</sup>

However, Thomas Kneght of Bedford (St Pauls) who made his will on the 26th of February 1530, expressed rather different sentiments from those of Robert Spencer about the relative powers of his feoffees and executors. Thomas Kneght, who may have had some doubts about the integrity of his *feoffees to uses* declared his wish that

---

<sup>17</sup> Beds. C.R.O. ABP/R 2, p. 174d.

<sup>18</sup> Beds. C.R.O. ABP/R 2, p. 8.

his:

feoffees of trust do deliver estate peacably without any debarring, troble or lett to beneficiaries, when it shall be required of them by counsell of my executors and supervisors.<sup>19</sup>

It can be argued that the wording of this will simply indicates that the timing of the implementation of bequests was to be at the discretion of the executors and supervisors, but still, the implication is that the feoffees were to act as and when required by the executors rather than the reverse.

The reference in John Hardyng's will to the parish church as a venue for the rendering of accounts by his executors to his feoffees may again indicate the degree to which the Church at parish level, if not at archidiaconal or diocesan level, might be involved in the satisfactory implementation of a will of land. It is possible that the parish church was to be used simply because it was a focus of the local community and no jurisdictional implications are involved. Furthermore, since it was the executors of John Hardyng's will who were asked to make their account to the *feoffees to uses*, and whose activities were regulated by the Church, the ecclesiastical venue may need no further explanation. This will does not provide any information on other persons (if any) who were to be present at this accounting.

It is interesting to compare the information provided by John Hardyng's will with evidence derived from a non-testamentary source by Burgess, of a similar situation in the parish of St Mary le Port in Bristol. In the latter case, 'men of good evidence and sadness' had gathered in the parish church, on the 22nd of June 1513, in the presence of their parson and had sworn to partake in and witness the arrangements that a butcher of Bristol, one John Newman (who had been mortally wounded by his

---

<sup>19</sup> Beds. C.R.O. ABP/R 3, pp. 106d-109.

servant), had sought to 'make for his soul'. These arrangements apparently included the enfeoffment of a messuage under the terms of which the testator's widow was to enjoy the property for her lifetime after which it was to be held in perpetuity by the feoffees and their heirs and assigns (presumably to 'find' masses and prayers for the deceased and his family).

It is not entirely clear whether this meeting was an attestation of an irregular will (that is, one which was unsigned or insufficiently witnessed for example). Burgess does not attempt to identify or categorize the incident but apparently thought that, strictly speaking, it did not constitute a will. He has noted that the will recorded in the prerogative court of Canterbury as being that of John Newman was of a very brief and vague character and was dated the 31st of August 1513.<sup>20</sup> If the meeting in the Bristol church was an attestation of an irregular will, it does indicate that the church, at least at parish level, would be informed of an individual's wishes concerning the disposition of both real and personal property. If the incident was primarily an enfeoffment to uses, made before John Newman was attacked and mortally wounded, it suggests that testamentary declarations could be made at the same time, even though no formal, or written testament was made. Whatever the purpose of the meeting, it does demonstrate that enfeoffment of real property could be undertaken within a parish church, in the presence of a cleric and was closely connected with an individual's overall preparation for death and for the good of his or her soul.

It is as well to remember that the device of the use and the declaration of the uses in a last will provided the testator with the freedom to dictate what should be done, when and by whom, with his real property. It would be the rights of the *cestue*

---

<sup>20</sup> Burgess, 'Wills and Pious Convention', pp. 27-29, citing J.R. Brimble, 'Ancient Bristol Documents, ii: A Curious Deed belonging to the Parish of St Mary le Port'. Proceedings of the Clifton Antiquarian Club, i, 1884-1888, 136-141.

*que use* rather than any rules of law which would be upheld by the Chancellor should the need arise. The device of the use thus tied in well with the accepted aim of a last will, in which the establishment and enactment of a testator's wishes were considered to be paramount.

As with the appointment of executors, but unlike the appointment of supervisors and the naming of some witnesses, the Bedfordshire testators apparently thought it unnecessary to record the occupation or rank of their *feoffees to uses*. In the wills under study the occupation and status of only two feoffees is recorded, and both are priests.<sup>21</sup>

It has been observed in chapter three, that women were frequently named as executors by the Bedfordshire testators, yet not one woman is named in the wills under study as a *feoffee to uses* – despite the fact that in theory, a woman could be both a *cestue que use* and a *feoffee to uses*.<sup>22</sup> As so few of the Bedfordshire testators identify their feoffees no firm conclusion can be drawn from what is only an apparent absence of female representatives.

Whereas executors were frequently found within the family circle of the testator an analysis of the identified feoffees chosen by the Bedfordshire testators suggests a somewhat different emphasis. Of the eighteen testators who identified some or all of their *feoffees to uses*, only three named a feoffee who shared their surname (in two of these wills the exact relationship between the testator and the *feoffees to uses* is not specified, in the third, the feoffee is identified as the testator's brother) and two other testators appointed a son-in-law in this capacity.<sup>23</sup> It is

---

<sup>21</sup> Agnes Radwell of Kempston, Beds. C.R.O. ABP/R 3, p. 124d and William Lokins of Turvey, Beds. C.R.O. ABP/R 3, p. 52.

<sup>22</sup> Holdsworth, *A History...*, vol. iv, p. 428.

<sup>23</sup> John Moreton of Ampthill, Beds. C.R.O. ABP/R 3, p. 7; John Spencer of Pavenham, Beds. C.R.O. ABP/R 3, p. 78; John Wales of Langford, Beds. C.R.O. ABP/R 2, p. 69; Edmond Galaway of Great Stoughton, Beds. C.R.O.

possible that *feoffees to uses* were frequently chosen from friends and neighbours of the testator, who, unlike the testator's immediate family, had no possible interest or claim upon the land enfeoffed, and who therefore might have been expected to act in a disinterested manner; while an executor's function was to fulfil the will which was perhaps an accepted obligation of one family member to another. As has already been observed, however, some feoffors were content to appoint the same individuals as executors and *feoffees to uses*; the circumstances of the enfeoffment and of the feoffor himself (whether the feoffment was made during mortal illness, and whether or not the feoffor and testator had trustworthy relatives to appoint, for example), must prevent any broad generalizations being drawn on this point.

The fear of fraudulent dealings by feoffees must have been a major source of anxiety for many a feoffor, and it is therefore unsurprising that, as Holdsworth observed:

It is most unusual to find only one feoffee. They are usually a party, and sometimes a large party of persons.<sup>24</sup>

The paucity of references to *feoffees to uses* in the Bedfordshire wills means that it is impossible to establish how often a 'large party' of feoffees were chosen; although the will of Cuthbert Cutlat quoted on pages 151-152 of this chapter indicates that at least five feoffees could be appointed. But it may be significant that only two of the testators under study who make any reference to intermediaries refer to, or identify, a single feoffee.<sup>25</sup>

---

The appointment of a single *feoffee to uses* was unwise for another reason; if

ABP/R 2, p. 59 respectively.

<sup>24</sup> Holdsworth, *A History...*, vol. iv, pp. 421-422.

<sup>25</sup> The wills of John Wales of Langford, dated 30 January 1526 and Agnes Radwell of Kempston, dated 10 November 1533, Beds. C.R.O. ABP/R 2, p. 69 and ABP/R 3, p. 124d respectively.

he or she died, the estate of which that individual was enfeoffed would become liable to dower and to feudal incidents. And if the feoffor died without an heir, the estate would escheat to the lord who would not be bound by the use.<sup>26</sup> Two of the Bedfordshire testators make reference to the possibility of their feoffees dying. William Fossey of Houghton Regis declared that if his son, William, died without heirs, then his real property, both free and copyhold, was to be sold by his:

executors and supervisor and feoffees at that time being, or else if they fayl by the churchwardens at that time being [although William Fossey goes on to say, confusingly,] with the [ad]vise always of my feoffors.

And Richard Flecher/Cooke of Northill, declared that if his feoffees died:

then the feoffees or heirs of them by deed make a sufficient grant to my sayd wife for life.<sup>27</sup>

Because there was no necessity for the Bedfordshire testators to make a formal declaration of uses in their will or to include all the details of the use (the naming of feoffees for example), the value of the information on the device provided by the wills under study, is largely non-statistical.

It was not only the freedom over the disposition of real property which the device of the use provided during the later medieval period, but also the informal mechanism of the device itself, which enhanced and increased the informal and individual element of wills during the later medieval period.

---

<sup>26</sup> Holdsworth, *A History*, vol. iv, p. 422.

<sup>27</sup> Beds. C.R.O. ABP/R 2, p. 61.

## **CHAPTER SEVEN**

### **THE BEDFORDSHIRE WILLS AND INHERITANCE STRATEGIES**

## The Background

What can the Bedfordshire wills under study reveal about the impact of the device of use on inheritance patterns in that county in the early sixteenth century? And what problems are to be encountered by the historian of inheritance strategies, using wills of land which are declarations of uses?

Although feudalism and the rights and obligations associated with land tenure were waning by the late medieval period, it is thought that primogeniture did not undergo a similar decline, and may have become widespread during the sixteenth century.<sup>1</sup> Partible inheritance was regarded as a potential threat to the order and stability of the realm. Thomas Lupset was probably echoing the view of many sixteenth-century landowners when he declared that:

If the lands in every great family were distributed equally betwixt the brethren, in a small process of years the head families would decay and by little and little vanish away. And so the people would be without rulers and heads.<sup>2</sup>

Although Simpson has suggested that:

A rigid doctrine of primogeniture was entirely anachronistic in the sixteenth century, and landowners were not prepared to sacrifice their younger children to it,<sup>3</sup>

the criticisms of some contemporary observers indicate that primogeniture was practised widely among the gentle and noble strata of society in the first half of the sixteenth century and that in some cases younger sons were disinherited entirely,

---

<sup>1</sup> Joan Thirsk, 'The European Debate on Customs of Inheritance, 1500-1700', in Goody, et al, Family and Inheritance ..., pp. 184-185; Houlbrooke, The English Family ..., pp. 234-235.

<sup>2</sup> Thomas Starkey, 'Dialogue Between Cardinal Pole and Thomas Lupset, 1532-1534', quoted in Thirsk, 'The European Debate...', p. 184.

<sup>3</sup> Simpson, A History of the Land Law, p. 191.



causing hardship and distress.<sup>4</sup>

There is some doubt, however, as to how far down the social order the practice of primogeniture, or at least a rigid application of the rule, was observed. There is evidence to suggest that during the period under study, primogeniture was spreading down through society at least as far as 'gentlemen of the meaner sort' – and as Englishmen of lesser means espoused the rule some had to neglect younger sons for lack of means to provide for all.<sup>5</sup> Houlbrooke has suggested that during the early modern period, a strong sentiment in favour of primogeniture was also to be found among the 'prosperous middling sort' and he observes that:

Even clerical writers whose audience was probably drawn predominantly from townsmen and yeomen upheld and justified the favoured position of the first-born with references to nature and Scripture as well as law and custom.<sup>6</sup>

There was not always a clear distinction between partible and non-partible succession, however. Primogeniture as practised in most parts of Europe and possibly in some areas of England did not always mean the complete exclusion of children other than the heir at law from the landed estate. In some families, younger sons were provided with small parcels of real property, either newly purchased or taken from the main holding.<sup>7</sup> In other families, heirs who were burdened with making provision for their brothers out of the profits of their inheritance, and whose siblings continued to live and work on the main holding, were more the caretakers of 'family land than

---

<sup>4</sup> Thirsk, 'The European Debate ...', p. 185.

<sup>5</sup> Thirsk, *Ibid.*

<sup>6</sup> Houlbrooke, *The English Family ...*, p. 234.

<sup>7</sup> Houlbrooke, *The English Family ...*, p. 234-235; Spufford has suggested that provision of parcels of land to younger sons could, in some areas, have weakened the main holding sufficiently for it to fall victim to engrossers. 'Peasant Inheritance Customs ...', pp. 168-169.

absolute owners, in anything but a strictly legal sense'.<sup>8</sup>

The development of primogeniture had precipitated the freedom of alienation of land during a man's lifetime. Thus, during the period under study a father could provide his younger sons (and daughters) with real property during his lifetime without requiring the consent of the heir. The heir was to some extent compensated by the prohibition of the devise of land; real property which remained in the father's possession at his death could not under common law be willed away from the heir.<sup>9</sup>

The development of the device of the use during the medieval period, and the outcry after the Statute of Uses of 1536, suggests that the lack of freedom to devise land at death was a cause of resentment among landowners for which the freedom to alienate land during the holder's lifetime did not entirely compensate. At a time of high mortality and sudden death, many parents must have been unable to make landed provision for children other than the heir at law, simply because the parents died or found themselves mortally ill before they could do so. Furthermore, the transferring of real property to children during the father's lifetime meant the loss, or at least the weakening of, parental control over the recipient, a situation that was not viewed with equanimity by all medieval landowners.<sup>10</sup>

What information do the Bedfordshire wills provide about the inheritance practices in that county in the early sixteenth century? The size of the will-making population does not, of course, provide any indication of the proportion of the land-holding population which took advantage of the greater freedom over the disposition of real property provided by the device of the use. As has already been observed,

---

<sup>8</sup> Howell, 'Peasant Inheritance Customs ...', pp. 138-139; Spufford, 'Peasant Inheritance Customs ...', p. 157.

<sup>9</sup> Pollock and Maitland, *The History ...*, vol. ii, pp. 308-309, 329-330.

<sup>10</sup> Houlbrooke, *The English Family ...*, p. 190.

uses did not have to be declared in the form of a last will, although this may have been a popular method. The significance of the six hundred and fifty Bedfordshire testators used in this study who made a bequest of land in some form, in the first thirty-three years of the sixteenth century, and whose wills were registered in the court of the Archdeacon of Bedford (but not necessarily enacted), should not be overstated.

This study, however, is not concerned with establishing the incidence of the use in Bedfordshire during the period under study, but rather how the device of the use interacted with the document or intention, known as the last will and testament, and how this interaction affected the character of the will and the utility of a will for the historian. This section of the study will therefore examine the information contained in the Bedfordshire wills on the devise of land.

### **Partible and Non-Partible Succession**

The difficulties and limitations of using information derived from wills to establish inheritance patterns have already been observed by many historians. These observations have generally focussed upon the fact that the will of land was only one of several modes of the transmission of land from one individual and from one generation to another. Wills, therefore, do not provide a full picture of the disposition of an individual's real property throughout his lifetime.<sup>11</sup>

Far less attention has been paid by historians to the nature of the document known as a 'last will and testament', although this has as great an influence on the type and limitation of the information contained in the document as does the place of

---

<sup>11</sup> See, for example, Spufford's observations in *Contrasting Communities*, p. 104, and those of Alan Macfarlane in, *The Family Life of Ralph Josselin, a Seventeenth-Century Clergyman: an essay in Historical Anthropology*, Cambridge, 1970, p. 64.

that document in the overall process of the transmission of land. The wills of land used by historians to study inheritance patterns have generally, but not exclusively, been made after the Statute of Wills of 1540, and the bequests contained in them were thus admissible under common law. The invalidity of the Bedfordshire wills at common law and the existence of the device of the use during the period under study, may have ensured that there are further limitations and problems to be encountered by the historian of inheritance strategies using wills made before 1540.

A major interest of historians of inheritance has been the establishment of the incidence of partible and non-partible succession in a given locality or region.<sup>12</sup> Does the information yielded by the Bedfordshire wills indicate that pre-1540 wills of land can contribute to this sort of study? Dr Thirsk has used a small sample of early Tudor Bedfordshire wills:

a county where there is no reason to suspect the survival of partible inheritance as a strong manorial custom,

to show 'how often men still shared their land among all, or some of their sons'.

Thirsk found that of sixty-nine wills containing bequests of land, only 40 % insisted that after the death of the wife all land should descend to the eldest son. The remainder divided the land between some or all children.<sup>13</sup> It is quite accurate to say that the forty-one (60 %) of wills in which real property is left to more than one child, may indicate that partible succession was far from uncommon in early sixteenth-century Bedfordshire (although the small size of the will-making population means that no accurate assessment of the proportion of the Bedfordshire population practising partible inheritance can be made from the information contained in the wills). But what also needs to be said is that an incalculable proportion of the

---

<sup>12</sup> See for example, Spufford, *Contrasting Communities*..., pp. 85-87, 106-111, 159-160, and Houlbrooke, *The English Family*..., pp. 234-247.

<sup>13</sup> Joan Thirsk, *The Rural Economy of England*, 1984, p. 224.

remaining twenty-eight (40 %) of wills in which land is left 'to the eldest son' may also represent the incidence of partible inheritance.

A close examination of the sixty-nine wills used by Dr Thirsk, shows that only three (7.6 %) of the testators who left the real property mentioned in their will to one son actually identify that son as their eldest, or only, male child. It may be unsafe to assume that the son who is to inherit under the terms of the will is indeed the testator's eldest surviving male offspring, and therefore the heir at common law, unless this is clearly specified. Such an assumption has also been made by Cicely Howell, whose study of the surviving records of Kibworth Harcourt in Leicestershire for the period 1280 to 1700, led her to observe that:

The probate records of the sixteenth century confirm that monogeniture was still the custom in the early modern period [in Kibworth Harcourt] and from the parish register it can be ascertained that the single heir was the eldest son, which was almost certainly the case also in the medieval period.<sup>14</sup>

Studied in the full context of the laws of succession, the Bedfordshire wills under study indicate that this use of later documents to support a retrospective contention may be unwise (even where the time lapse is relatively short). Since it is also unwise to generalize from one locality to another it must be acknowledged that the following discussion may be pertinent only to Bedfordshire. However, the information provided by the wills under study may also have implications for the study of inheritance strategies in other areas.

At a time when real property was not devisable, an incalculable proportion of testators may have been content to allow the bulk of their lands to descend according to the rules of common law and used their wills to make provision for a younger son

---

<sup>14</sup> Cicely Howell, Land, Family and Inheritance in Transition: Kibworth Harcourt, 1280-1700, Cambridge, 1983, p. 243.

for example, or an impoverished relative, or grandchild, as part of their attempt to discharge family responsibilities and make a good end. By the reign of Henry the Eighth, a will which declared a use in favour of the heir at common law would be declared void<sup>15</sup> (since the only function of such a declaration of uses would be the avoidance of feudal dues). And although, as will be observed later in this chapter, there were circumstances under which the use could be employed and in which the declaration in a last will could allow the bequeathing of land to the testator's heir at common law, pre-1540 wills of land may have had an emphasis away from the eldest son.

The difficulties of using information derived from early sixteenth-century wills alone to establish the identity or seniority of a son who is named as the only offspring to receive land under the terms of his father's will, can be illustrated by wills taken from the sample used by Thirsk (but not apparently taken into account by her) which do not specify the seniority of the son, and in which the wording suggests or implies either that the beneficiary is, or is not, the eldest male child. William Core, a butcher from Potton, for example, whose will is dated the 1st of October 1505, left to his son Thomas his house called Christophers, on condition that Thomas paid to the testator's son William 40s at his father's death 'and at such tyme and tymes as to the same Thomas shall be thought requisite.' This testator went on to record his wish that the 'same Thomas to be freyndly to his said brother'.<sup>16</sup> The implication being that the elder brother and heir at law should look after and provide for his younger sibling.

On the other hand, William Godfrey of Luton (whose will is dated the 17th of November 1518) left a house in Luton to his son Thomas, and directed that this same son should pay four pounds at four-yearly intervals to his five siblings, Alice,

<sup>15</sup> Baker, 'Uses and Wills', 194.

<sup>16</sup> Beds. C.R.O. ABP/R 1, p. 74d.

William, John, George and Harry. The testator then declared that if any of these children died their portion was to go to his son Roger, who is not mentioned in any other context in the will. It is possible that this son is the testator's youngest child but, if so, it is difficult to see why the testator has excluded him from a share of the money to be paid to his sister and brothers. It is also possible that Roger is the testator's eldest son who would inherit the bulk of the testator's real property under the rules of common law (see below) and only gain from his father's will if any of his siblings died.<sup>17</sup>

Another Bedfordshire testator, John Huckell or Hokyll of Henlow, whose will is dated the 16th of May 1529, left to his son John a copyhold called 'balardys'.<sup>18</sup> This is the only bequest of real property in the will, and the testator's other son William is merely left some household items. William Huckell may indeed have been the testator's younger son, and the copyhold may have been the only real property in the testator's possession at the time his will was written. However, the testator may also have been a freeholder and was content to allow the freehold to pass to the heir at common law. William Hokyll, who did not receive any real property under the terms of the will, was considered to be important enough to be named in the list of witnesses (although neither son was named as an executor). There is no direct or irrefutable evidence in these examples which allows firm conclusions to be drawn on the seniority of the beneficiary and others mentioned in the document. However, there is sufficient information to at least cast doubt over the contention that sons named as single beneficiaries were necessarily the common law heir.

Thus, an incalculable proportion of the wills in the sample used by Dr Thirsk, which leave land to only one son, may represent the incidence, not of impartible

---

<sup>17</sup> Beds. C.R.O. ABP/R 1, p. 112.

<sup>18</sup> Beds. C.R.O. ABP/R 3, p. 10.

inheritance, but of the bequeathing of land to a child other than the heir at common law. While it can be recorded that two hundred and sixty-eight (44 %) of the testators under study left land to one son, or one daughter or to co-heiresses and that sixteen (19 %) of the Bedfordshire testators divided their land between more than one son or between children of both sexes, it can only be concluded that the sixteen testators in the latter category formed the minimum number of testators who were practising partible succession and that only the three testators from the former category who specify that the single heir named in their will is their eldest male child can be definitely identified as practising primogeniture. Those testators who bequeathed all the real property mentioned in their will to co-heiresses where no male child is mentioned, cannot be assumed to be without male offspring; they may have been using the will to provide for daughters who would not inherit under the rules of common law.

It follows that where a testator was using his will to provide children other than the heir at common law with real property, it is possible that not all the realty remaining in the testator's possession at his death is mentioned in the document (since it is unlikely that a high proportion of these testators was attempting to employ the use to entirely disinherit the heir at common law). This is true both of those testators who leave land to more than one child and of those who leave property to one child who is not clearly the heir at common law (and see above, the will of John Huckell). Thomas Bechner of Turvey, who made his will in the year 1527 (full date not given) for example, left a small amount of property (two acres) to each of five named sons and daughters, but named another son who was not included in the list of beneficiaries of real property, as his supervisor.<sup>19</sup> It may be that the son who was named as supervisor of this will was not the testator's eldest son, and therefore not the heir at common law and he may have been excluded from the list of beneficiaries of real

---

<sup>19</sup> Beds. C.R.O. ABP/R 2, p. 52d.



property because he had been provided with land during his father's lifetime. However, the provision of a small amount of real property to offspring of both sexes and the naming of a son who was not bequeathed land in the will as supervisor, a position of considerable responsibility, may suggest that the bulk of Thomas Bechner's land was intended to pass to the eldest son under the rules of common law and the real property mentioned in the will was an attempt by the testator to provide for his younger children by means of the use.

Thomas Browne, a fishmonger of Bedford (St Pauls), whose will is dated the 15th of June 1532, left his house to his wife for life and then to his youngest son John and his heirs. If John died without heirs the testator declared that the house was to pass to his son Richard and heirs, and in default of heirs of this son, the property was to pass to the testator's eldest son, John.<sup>20</sup> This property may have been held in burgage tenure and was therefore devisable by custom (although this is not specified). Whether he was devising by custom or by the device of the use, this testator may have been passing his shop premises to the son most suited to, or most interested in, his father's business; or the will may indicate that the custom of borough English was practised in Bedford. On the other hand, the house mentioned may have formed only a small part of the testator's entire landed estate, the bulk of which was intended to descend according to the rules of common law and is not mentioned in the will.

William Harvey, also of St Pauls' parish in Bedford, who made his will on the 7th of February 1527, left the house in which he lived to his wife for life and then to his daughter, Alice, 'if she outlives her mother'. This one bequest is all the real property mentioned in the will and the testator's son is merely left some 'sherys' and other items that 'longeth [to the testator's] occupation'.<sup>21</sup> Since it is unlikely that a son who was thought capable of continuing his father's occupation would be excluded

<sup>20</sup> Beds. C.R.O. ABP/R 3, p. 62.

<sup>21</sup> Beds. C.R.O. ABP/R 2, p. 75.

from his father's landed estate, it must be assumed that either the testator's son had been provided with land during his father's lifetime, or that the real property mentioned in the will did not constitute the testator's entire landed estate at his death.

With these limitations in mind, it would also be hazardous to conclude that a testator who bequeathed all the real property mentioned in his will to his younger or youngest son was practising ultimogeniture; although it is possible that the real property mentioned in such a will was subject to the custom of ultimogeniture, it does not necessarily form the testator's entire landed estate.

On the other hand, it would be wrong to assume that the use prevented all testators from employing the device to bequeath property to the heir at common law. It has already been observed that in the reign of Henry the Eighth, wills which employed the use in favour of the heir at law would be declared void, but a testator was entitled to declare a use in favour of the heir, in tail with remainder over (that is to create a 'class' of heirs).<sup>22</sup> There are several examples of this strategy among the wills under study. William Bird of Turvey, for example, who made his will on the 2nd of September 1527, left the house that he lived in to his eldest son John, and declared that the house was to remain to his other children (should they survive the eldest son), one after the other. If all the children departed without issue, the testator directed that the property was to be sold and the resulting money used for the good of specified souls.<sup>23</sup> And John Archer of Lidlinton, whose will was drawn up in the year 1518 (full date not given) left his house and land to his wife for her life, which after her decease were to:

remayn to Richard Archer my eldest sonne, and if fortune the sayd  
Richard to dye without issue of his bodye lawfully begotten then I will  
that the sayd howse with all appurtences to remayn to Agnes Archer my

---

<sup>22</sup> Baker, 'Uses and Wills', p. 195.

<sup>23</sup> Beds. C.R.O. ABP/R 2, p. 66.

daughter ...<sup>24</sup>

Thus, the heir at common law was deprived of the freedom to leave the property bequeathed to him (or her), as he or she wished, and would be forced to follow the terms laid down in the declaration of uses. Some of these entails are very complicated and their declaration is recorded over several pages of the register.<sup>25</sup>

Testators might include a 'bequest' of land in a will which is really an acknowledgement that the land referred to was entailed by their father or another ascendant. John Pett of Caddington (whose will is dated the 8th of November 1520), left all his houses and lands 'in Cadyngton' to his brother, 'to order and fynd' the testator's two sons until they came to lawful age. If the sons died without heirs the testator declared that the property was to revert to his brother 'according to the will of my father'.<sup>26</sup> And Hugo Lecton of Southill left his house and lands to his daughter at eighteen years of age, providing that she kept the property in repair. If his daughter failed to meet this condition, or died without heirs, the testator declared that the property was to remain to the next heirs 'according to my father's will'.<sup>27</sup>

Land was not entailed only in order to allow a testator to devise an equitable estate to his or her heir at common law; many testators may have wished to ensure that their real property would not be bequeathed or sold away from their family at a future date. Thomas Paulte of Wootton, for example, who made his will on the 15th of November 1505, left his 'place' to his niece, Joan, and her heirs, and in default of heirs, declared that the property was to pass to her niece's brother, William and his

---

<sup>24</sup> Beds. C.R.O. ABP/R 2, p. 80.

<sup>25</sup> See, for example, the will of Thomas Norrett of Houghton Regis (dated 23 March 1524) Beds. C.R.O. ABP/R 2, pp. 57-59.

<sup>26</sup> Beds. C.R.O. ABP/R 2, p. 163.

<sup>27</sup> Beds. C.R.O. ABP/R 3, p. 4d.

heirs.<sup>28</sup>

Thus, where the property bequeathed in a will is clearly entailed, the beneficiary cannot be assumed to be the testator's heir at common law. A bequest of land was not always initiated by the testator, therefore, and the use could impose restrictions, as well as allowing freedom, on the devise of real property by an individual. The wills under study (and indeed all wills of land made before the Statute of Wills of 1540) would therefore seem to have a very limited and problematic application for the study of partible and non-partible succession.

### **The Inheritance of Land by Females in Early Sixteenth-Century Bedfordshire**

The study of inheritance should not be confined to establishing the incidence of primogeniture and the division of land between two or more offspring. The Bedfordshire wills contain much that is of interest to the historian of inheritance who wishes to study the fine details of patterns of succession. For example, the emphasis on the common law rule of primogeniture by historians has led to a corresponding emphasis on the succession to real property by male offspring. Daughters and other females are rarely mentioned in the context of the debate, and their role in the overall pattern of inheritance is frequently dealt with in a dismissive manner. Spufford, for example, has suggested that the wills made between 1543 and 1630 by inhabitants of the Cambridgeshire village of Orwell, indicate that:

It was not common for women to inherit land, although they did so when there was no son, or occasionally at the whim of an eccentric father or even grandmother'.<sup>29</sup>

Spufford was using wills made and proved after the Statute of Wills of 1540, when

---

<sup>28</sup> Beds. C.R.O. ABP/R 1, p. 72.

<sup>29</sup> Spufford, *Contrasting Communities*, p. 111.

real property had become devisable at common law, but historians of the medieval period reveal a similar attitude. Noting the rise in feoffment to uses during the fourteenth century, K.B. McFarlane observed that:

The result was a marked improvement in the prospects of younger sons... Without wishing totally to disinherit his heir a landowner felt at liberty to distribute his tenements among his sons in varying proportions.'<sup>30</sup>

Historians seem convinced that daughters would be provided with real property only where sons were lacking.<sup>31</sup> However, the will of William Harvey of Bedford, quoted on page 172 of this study indicates that daughters might receive real property even when their male siblings survived.

Ninety-six (15.7 %) of the testators under study, who made a will of land in some form, made a bequest of real property to a female (other than their wife, see below, page 182). Again, no far-reaching assertions about the extent of the inheritance of land by females in early sixteenth-century Bedfordshire can be made using this information alone; the testators in this group, covering a period of thirty years, may represent the maximum number of individuals who employed the use to provide a female with real property during that period. On the other hand, the use may have been employed to provide daughters and other females with land by an incalculable number of individuals who did not declare the uses in a will, and thus the wills under study can be said to represent the minimum.

Seventy-five (82 %) of the female beneficiaries of land (other than widows) in the Bedfordshire wills, were identified in the will as a daughter of the testator. A

---

<sup>30</sup> K.B. McFarlane, The English Nobility in the Later Middle Ages, Oxford, 1973, p. 80-81.

<sup>31</sup> See, for example, the discussion of inheritance in the early modern period by J.P. Cooper, in 'Patterns of Inheritance and Settlement by Great Landowners from the Fifteenth to the Eighteenth Centuries', in Goody et al, Family and Inheritance, pp. 192-327 and Houlbrooke, The English Family ..., chapter nine.

further five (5 %) were identified by name only and it is not possible to establish their relationship to the testator with any certainty. Three (3 %) were identified as nieces of the testator; two (2 %) were granddaughters, and the remainder (one each) was divided between female ascendants (either a mother, or mother-in-law) a kinswoman, or a female servant.

The Bedfordshire wills show a tendency for female testators to leave real property to female beneficiaries. Although female testators formed only fifty-two (7.4 %) of the group of testators who made a will of land, they accounted for twelve (12.8 %) of testators who left land to a female. All but two of these female testators left their real property to a daughter, and no other children are mentioned in the will.

An incalculable proportion of the female testators who bequeathed real property to a female beneficiary may not themselves have been feoffors, but may simply have been reiterating the instructions to feoffees which had been recorded by their husband (and which may or may not have been recorded by the husband in a will of lands). Women could be feoffors to uses (see above page 149) but there is some evidence in the wills under study to indicate that a widow could repeat or re-emphasize the nature of the uses declared by her husband (see below, page 219-220 of this study). The propensity of female testators to make bequests to female beneficiaries has been noted by other historians,<sup>32</sup> but where real property is concerned it is impossible to evaluate with any certainty the degree to which inheritance by women in early sixteenth-century Bedfordshire was dependant upon other females.

Testators making bequests of real property to a female other than their wife represented fifty-two Bedfordshire parishes (almost 40 % of all parishes in the

---

<sup>32</sup> See, for example, M.W. Labarge, *A Small Sound of the Trumpet: Women in Medieval Life*, 1990, p. 36, citing Sharon Ady, 'Women and Wills', a paper given at the Berkshire Conference of 1984.

county) and were fairly evenly distributed within the represented villages.

The inheritance of land by the women in Bedfordshire in the early sixteenth century should not, however, be overstated. In a fairly high proportion (eight - 30 %) of the wills of land under study in which real property is left to children of both sexes, the wording of the will suggests that the greater part of the land is being left by the testator to his male offspring and female beneficiaries are to receive a smaller share. The inability to determine whether or not the land mentioned in the will forms the whole or only a part of the testator's landed estate, discussed on page 186, need not detract from the significance of the different amount of real property left to male and female offspring in the will.

In only five (20 %) of wills which contain bequests of realty to offspring of both sexes is it apparent that the property is being divided equally between sons and daughters. In the remaining 50 % of wills in this group, the property to each child is referred to only by name, or as a 'tenement' or 'messuage' and it is impossible to assess the acreage bequeathed to each child. It may be however, that females tended to be left less real property than their male siblings.

The difference between the amount of land bequeathed to a son and a daughter could be substantial; John Poley of Biddenham, whose will was drawn up on the 19th of April 1506, left to his son John, seven acres together with all his lands in the fields of Bedford. The testator's daughter Joan was left only two acres.<sup>33</sup>

Furthermore, where male offspring survived, a bequest of real property to a daughter could be of a very tenuous nature. Thomas Hill of the Bedfordshire parish of Lidlington declared:

I bequeath to Margerit Hill my dowtter a pese of lond of viii akers callyd stokyng, to have the same lond when she marre or be weddyd... Yff

---

<sup>33</sup> Beds. C.R.O. ABP/R 1, p. 123.

Margyt decesse I will that John Hill my sun have the same lond whan he ys at mannys estat and abul to ockapy yt and yff he will geve to Margyt my dowtter x marke for the lond at any tyme after sche ys in power and strength of the forsayd lond then so be done: John to have the lond.<sup>34</sup>

Bequests of real property to male offspring could also be limited to a term of years, or of a conditional nature. However, it may be significant that none of the Bedfordshire testators made a similar declaration to that of Thomas Hill, but in favour of a female at the expense of a male beneficiary. Where a testator envisaged a male beneficiary being deprived of a gift of real property, it was because of the misbehaviour of that beneficiary, or his failure to fulfil a condition attached to the bequest. Among the testators under study, male beneficiaries were not, apparently, expected to be simply 'bought out' by a female sibling.

Fear that land left to female offspring might be lost to, or sold away from, the testator's family is expressed in the will of John Moreton of Ampthill (drawn up on the 13th of March 1528). This testator asked that after the death of his wife his real property should be equally divided between his two daughters and he declared that if his daughters married and their husbands wanted to sell the property, then Ralph Moreton (whose relationship to the testator is not specified) was to have the land before another, and that it would not be lawful for them to sell to anyone else.<sup>35</sup> Under the rules of common law it would not have been legal for the husbands of John Moreton's daughters to sell the property at all, unless it had been explicitly transferred to them under the terms of the marriage contract. A husband could enjoy the profits of his wife's real property while the marriage lasted, but when the marriage ended (normally with the death of one of the partners) the property would revert to the wife or to her heirs. If there had been live-born issue of the marriage during the life of the wife, the husband could be allowed to enjoy the property for his lifetime and thus a

---

<sup>34</sup> Beds. C.R.O. ABP/R 1, p. 3d.

<sup>35</sup> Beds. C.R.O. ABP/R 3, p. 7.



second husband could keep the son of a first marriage from entering his inheritance, while he lived. This rule of courtesy applied only to freehold property; the husband had no automatic right, after his wife's death, to copyhold land, although in some areas custom did allow courtesy of copyhold.<sup>36</sup> Thus, John Moreton may have been preventing his daughters from making a specific transference of the property to their husbands at the time of their marriage.

Because of the difficulties of assessing whether or not a testator is mentioning all his offspring, or his entire landed estate in his will, it is impossible to establish how many of the Bedfordshire testators left real property to a female because they had no male heir. Testators such as John Moreton who bequeath real property to co-heiresses, may have been survived only by daughters. On the other hand, an incalculable proportion of testators may have used their will to provide for female offspring while the bulk of the land descended to a son. The Ralph Moreton mentioned in John Moreton's will may have been a brother or cousin of the testator, he may equally have been the testator's son. Furthermore, this testator, although he is a parishioner of Ampthill, only refers in his will to immovable property in Maulden (a neighbouring parish) which may indicate that he is not mentioning his entire landed estate in his will.

Daughters may have received far less attention from landowners when it came to the disposition of real property than did their male siblings. However, the Bedfordshire wills indicate that daughters must be considered in the discussion of inheritance patterns and not merely in the context of their inheritance only in default of male heirs.

---

<sup>36</sup> Pollock and Maitland, *The History ...*, vol. ii, p. 414.

## Provision for Widows

The provision of real property for widows has received some attention from historians,<sup>37</sup> probably because a widow's rights to property were clearly defined both by common law and in many areas by custom and was not dependent upon the absence of male heirs to that property. The provision of widows with real property can therefore be studied within the primogenitary scheme, with which historians of inheritance patterns apparently feel most comfortable.

Dr Howell has noted the value of the information provided by wills on the nature of the provision made by a landowner for his widow.<sup>38</sup> Her study of wills made in the Leicestershire parish of Kibworth Harcourt in the sixteenth and seventeenth centuries has led Dr Howell to suggest that:

provision for his wife was an important, one could almost say overriding, consideration in a man's mind when he felt that his own days were numbered.<sup>39</sup>

It must be said that it may be hazardous to speculate on a testator's priorities or 'overriding' concerns beyond that of achieving a good end. The Bedfordshire wills indicate that provision for a widow is noted early in the will of land where the widow is to have responsibility for all or some of the testator's real property at his death. In wills where offspring are apparently of an age to enter upon their inheritance immediately, their provision is frequently dealt with first. It may therefore be an overriding concern for the immediate disposition of real property that is displayed by

---

<sup>37</sup> See for example, Spufford, Contrasting Communities..., pp. 88-90, 111-119, 161-164; Howell, 'Peasant Inheritance Customs ...', pp. 141-143; Barbara J. Todd, 'The Remarrying Widow: A Stereotype Reconsidered', in Mary Prior (ed.), Women in English Society, 1500-1800, London and New York, 1985, pp. 72-74.

<sup>38</sup> Howell, 'Peasant Inheritance Customs ...', p. 143.

<sup>39</sup> Howell, *Ibid.*

many testators.

Four hundred and twenty-nine (61 %) of male, non-clerical testators used in this study left some land to their wife, either for life, or for a term of years (normally until the majority of the heir, or until the widow's remarriage) or as an outright gift. Of this group, the highest proportion (two hundred and forty-four) (57 %) of testators made their wife custodian of their land for her lifetime, and it was the testator who decided on, and declared in his will, the destination of that property after the death of his widow. The widow was not inheriting the land in fee simple, therefore, but only for a specified term.

A few of the Bedfordshire testators did, however, will that their widow should be allowed to choose which of their offspring would inherit the property (see below, page 188-189) and forty-three (10 %) of the testators who bequeathed land to their wife made some or all of that property an outright gift. John Cooke of Elstow, for example (whose will is dated the 30th of April 1509), left the house that he lived in to his wife, 'to do with as she thinks best'.<sup>40</sup> The wording of this will is somewhat imprecise, and John Cooke may simply have meant that his wife could do as she wished with the house, but not sell it, during her lifetime, after which it would descend to the heir. The wording of the will of William Smyth of Bedford St Pauls, dated the 13th of April 1517, is less equivocal; this testator left his tenements to his widow 'freely to give and to sell'.<sup>41</sup>

It has been observed on page 105, that the device of the use was accused during the early sixteenth century, of being the means by which widows could be deprived of their dower. Although there was no automatic right to dower out of an equitable estate (that is, property which was enfeoffed), as there was under common

---

<sup>40</sup> Beds. C.R.O. ABP/R 1, p. 55.

<sup>41</sup> Beds. C.R.O. ABP/R 1, p. 238.

law rules, Bean has noted that some widows were better provided for under the terms of a use than they would have been under common law terms.<sup>42</sup> That this could indeed be the case in early sixteenth-century Bedfordshire is indicated by the wording of the will of John Crawley of Luton (dated the 24th of May 1519). This testator declared that:

I will that if my wiff be not content with my bequests to stand for her dury that then my bequest stand as voyd and she to have for her dury according to the law.<sup>43</sup>

Where copyhold property was concerned, customary practice could also be circumvented by the use, when a husband came to make provision for his widow. A custumal of 1484, from the Bedfordshire parish of Cranfield, shows that in that parish a widow was entitled to hold copyhold property, after her husband's death, for her lifetime.<sup>44</sup> Of the five wills of land in the registers under study, made by testators who held land in Cranfield, two indicate that copyhold property is to pass to the widow for her lifetime, one does not mention a wife at all<sup>45</sup> and the remaining two include bequests of copyhold property to someone other than the testator's wife, during her lifetime (in each case, the beneficiary is a son of the testator). Since both of these wills were made during the 1530s, it is possible that the custumal had become obsolete. It is also possible that the testator's widow was in each case in some way unfit to hold the property concerned, but it may be that both testators in this group were employing the use in order to deprive their wife of a life interest in land due to them under customary rules. It must therefore be acknowledged that the device of the use allowed a husband to exercise his discretion, or personal choice, over the

---

<sup>42</sup> Bean, *... English Feudalism*, p. 140.

<sup>43</sup> Beds. C.R.O. ABP/R 1, p. 122d.

<sup>44</sup> Beds. C.R.O. AD 341.

<sup>45</sup> Beds. C.R.O. ABP/R 3, p. 37d.

disposition of real property in a way which did not necessarily benefit the spouse and which may have left that spouse poorer in terms of land-holding than she would have been under common law or customary practice.

The personal whim or inclination of the testator, imposed by means of the will, may have been the major determinant in the type of landed provision made for a widow in the case of her remarriage, although there is evidence to suggest that custom may also have been influential. Using evidence from wills made by inhabitants of sixteenth-century Abingdon, Barbara Todd has found that attitudes towards the remarriage of widows changed in that locality towards the end of the century. In the mid-sixteenth century provision for the widow's remarriage:

was made without malice and only out of concern that the children's share of the estate might be at risk if the mother should lose control of her financial affairs by marrying again ... After about 1570 ... testators made certain that their wives should take none of their wealth into a new marriage by inserting a penalty withholding or reducing the wife's share of the estate if she remarried.<sup>46</sup>

This uniformity of provision within Abingdon (although it might change over a given period) does indicate that within a parish custom could exercise a considerable influence over testators in this respect. Dr Spufford has found that provision made by testators in sixteenth-century Cambridge could also vary from one parish to another, but that within a parish that provision might be the same between all social levels.<sup>47</sup>

In the Bedfordshire wills a similar variety of provision between parishes is evident. Roger Bunker of Tingrith, for example, who made his will on the 15th of December 1515, left to his wife Agnes the house in which he lived, and another house 'that John Selby dwells in'. The testator declared that if his wife remarried, his son

---

<sup>46</sup> Todd, 'The Remarrying Widow ...', p. 73.

<sup>47</sup> Spufford, *Contrasting Communities...*, pp. 88, 113.

William was to have the latter house, but his wife was to retain the other house for her lifetime.<sup>48</sup> And James Franklin of Shefford, whose will is dated the 21st of January 1527, left his wife a house in Shefford for life, if she remained sole, and declared that if she remarried she was to retain the house for six years, after which it was to pass to the testator's daughter Agnes, and her heirs.<sup>49</sup> But Thomas Clay, of Beston in Sandy, who made his will on the 19th of May 1527, bequeathed his house and lands to his wife for life on condition that she remained sole. If his wife remarried, the property was to pass to the testator's executors and supervisor, who were to sell it and use the money for the good of specified souls.<sup>50</sup>

So few of the Bedfordshire testators make any reference to the disposition of their property, should their widow remarry, that it is difficult to establish whether uniformity within a parish was the norm when the device of the use could be employed. The scarcity of references to remarriage and the frequency of bequests of real property to a widow 'for life' may indicate a liberal attitude on the part of the testators under study. However, it may simply have been assumed by the testators that in the event of their wife's remarriage customary practice would be applied. Again, the limited information provided by wills prevents any firm conclusions being drawn. In this respect the impact of the use on customary practice remains elusive.

In the absence of the information which was to be provided by parish registers from the later fifteen-thirties, the provision made by the Bedfordshire testators for their widows cannot be evaluated in the full context of family circumstances. Using information derived from wills, in conjunction with evidence provided by parish registers, Dr Howell was able to determine a tendency, in Kibworth Harcourt, for a testator to leave land to a son if some or all of his children were aged over twenty-

<sup>48</sup> Beds. C.R.O. ABP/R 1, p. 127.

<sup>49</sup> Beds. C.R.O. ABP/R 2, p. 143.

<sup>50</sup> Beds. C.R.O. ABP/R 2, p. 145d.

one, and to make the heir responsible for the maintenance of the widow according to prescribed conditions. Where a testator was survived only by minor children, land was normally left to the testator's widow alone, or jointly to the widow and a kinsman, who was usually the testator's son (it is not entirely clear whether 'the heir' referred to was in every case the eldest, or only, son of the testator).<sup>51</sup>

Whilst it is probable that the ages of their offspring influenced the way in which the Bedfordshire testators disposed of their real property at death, no precise analysis of family determinants can be made. For example, there are instances in the wills under study of testators who bequeathed real property to a son on condition that the beneficiary made certain specified provision for the widow (see below, page 192). Clearly, a son entrusted with real property and the care of the testator's widow is likely to have reached an age of reasonable maturity, but it may be unwise to conclude that he had necessarily reached the age of twenty-one. The device of the use allowed testators to bequeath real property to a beneficiary, who could enter upon that property before the common-law age of majority (see below, page 201). Furthermore, the beneficiary instructed to care for the widow may not have been the testator's eldest son; there may have been instances where a younger son was entrusted with that duty. The lack of detail in the Bedfordshire wills regarding the seniority of particular offspring precludes any firm conclusions being drawn on this point.

### **Bequests of Real Property to Ascendants**

It has been observed on page 177 of this chapter that female ascendants were bequeathed real property by some of the Bedfordshire testators, although the rules of common law forbade this. Testators desiring to 'make a good end' may well have found this aspect of the common rule of inheritance to be distasteful, and

---

<sup>51</sup> Howell, 'Peasant Inheritance Customs ...', p. 142.

incompatible with their consciences. Thomas Wales of Houghton Regis, who made his will on the 27th of January 1505, left to his father and mother a house and ten acres of land which he had bought from 'Thomas Smyth'.<sup>52</sup> This testator was not leaving property to ascendants because he had no surviving heirs; three of Thomas Wales' sons are named in his will, one of whom, Thomas, is named as the beneficiary of other real property after the death of the testator's widow.

It is possible that Thomas Wales' father had transferred all his realty to his son and had entered upon retirement, not envisaging that Thomas would die before him. The death of Thomas Wales could have placed his father and mother in an invidious position, particularly if his widow remarried and her new husband had no desire to share the household with her former parents-in-law. Thus, Thomas Wales employed the use in order to ensure that his parents enjoyed some independence in their later years. The common law rules are being flouted here, but it is of interest that Thomas Wales had 'diluted' this divergence somewhat, by leaving purchased property to his parents, rather than taking land from the main holding for this purpose; furthermore, the property is not left to the testator's parents in fee simple, but only for their lifetime.

This will provides the only instance, in the wills under study, of real property being bequeathed to a male ascendant (other than for a temporary period, until the majority of the heir for example). This may have implications for the age structure of the will-making population, and reflect the fact that most testators who had realty to bequeath, had acquired that property on the death, or at least incapacity, of their father, and therefore could not bequeath the land back to him in the event of their own death. Spufford has suggested that relatively few men made wills because:

The normal process was for a man to establish his children as they came of age, to be independent, and a father's gradual retirement began with the

---

<sup>52</sup> Beds. C.R.O. ABP/R 1, p. 73.



first marriage amongst his offspring.<sup>53</sup>

If this were indeed the case, it is possible to argue that more of the Bedfordshire testators might be expected to pass the land back to their father if they were overtaken by death at an early age, or at least while their father was still capable of farming the property. However, it must be conceded that the lack of bequests of real property to ascendants may simply be a reflection of the strength of influence of the common law rule on this aspect of inheritance; the Bedfordshire testators were convinced of the inadvisability of passing realty back to an ascendant. The descent, rather than the ascent of land was part of the natural order of life.<sup>54</sup>

### **Meritocratic Inheritance Strategies**

Pre-1540 wills of land were not only used to make provision for family members and non-relatives who did not receive any real property under the rules of common law. The restrictions imposed by primogeniture may also have been unattractive to parents because the eldest son would inherit the entire estate whatever his capabilities or character. Those fathers who survived until their offspring were no longer children could transfer much of their property to a more deserving son, if the behaviour of the heir was in some way deficient or disappointing. Individuals who found themselves mortally ill, and who were survived only by young children, had little opportunity to make such a transfer and were forced to use their last will in an attempt to ensure that their land would descend to a suitable heir. A fatherless eldest son might well have been tempted to behave as he wished, secure in the knowledge that at his majority the

---

<sup>53</sup> Spufford, 'Peasant Inheritance Customs ...', p. 176.

<sup>54</sup> Maitland suggested that the ban on ascendants inheriting may be closely connected to the relationship between lord and heir and that the only apology that can be offered for the principle that excludes direct ancestors is that 'heavy bodies never bound upwards in a perpendicular line'. *The History ...*, vol. ii, p. 294.

estate would pass to him under common law rules. In an apparent attempt to counteract the lack of control over an heir, which the rule of primogeniture imposed, some Bedfordshire testators used their wills to impose a meritocratic inheritance strategy.<sup>55</sup>

Two of these testators were inhabitants of Potton; Robert Whyttesyde, who made his will on the 12th of November 1505, declared that after the death of his wife his land should pass to the one of his two sons whom his executors thought 'most Thryving and honeste'.<sup>56</sup> And John Butler, a husbandman of Potton (whose will is dated the 6th of September 1509), left his house and land to his wife for life, and then to the child 'thought most Ayll to occupy them'.<sup>57</sup> Henry Abbott of Husborne Crawley asked that his wife should choose which of his sons was to inherit his land (this will is dated the 4th of November 1511),<sup>58</sup> and Thomas Bastedfilde of Marston Moretaine, who made his will on the 14th of November 1532, left his land to his wife for life and then to one of his sons, 'which of them [my] wyffe will at her election'.<sup>59</sup>

### Conditions Attached to Bequests of Land

The Bedfordshire testators also used their last wills to impose a wide variety of conditions, and the threat of disinheritance, upon those who were named as beneficiaries of real property. An element of threat was not first introduced to a last

---

<sup>55</sup> Houlbrooke has observed that there were 'substantial obstacles' to the disinheritance of the heir at common law. He notes that a major objection against entails voiced by Thomas Starkey in the 1530s, was that they weakened control over heirs. *The English Family ...*, p. 232, citing Starkey, *A Dialogue ...*, p. 176.

<sup>56</sup> Beds. C.R.O. ABP/R 1, p. 81.

<sup>57</sup> Beds. C.R.O. ABP/R 1, p. 58d.

<sup>58</sup> Beds. C.R.O. ABP/R 2, p. 23.

<sup>59</sup> Beds. C.R.O. ABP/R 3, p. 71d.

will and testament by the development of the use; anathema clauses (that is, the threat of the wrath of God called down upon an heir who refused to fulfil the terms of a will), are evident in very early wills (including the Anglo-Saxon 'cwide') and a somewhat diluted survival of such clauses may be identified in the urging of some testators that their executor(s) will faithfully enact the terms of the will 'as [she] wyll answer before God on the dredful day of dome'.<sup>60</sup> But the development of the device of the use allowed testators to enjoy considerable control over their realty; and the beneficiaries of realty, after their death and to use their land to ensure that other intentions were fulfilled.

Frequently, the inheritance of real property was made conditional upon the instigation and upkeep of masses and prayers for the testator's and other specified souls. In one hundred and ninety-five (25 %) of the wills used in this study, land, or the profits of land, are directed to the Church or another religious body such as a brotherhood or fraternity, an indication of the close association between the disposition of real property and the well-being of the testator's soul. William Godfrey of Luton, for example, who made his will on the 17th of September 1518, left to his wife Alice the rent of his house and lands in Luton for three years, provided that she caused two trentals to be said for the testator's soul - one at Luton, and one at 'Scala celi' in London, and 'do his pilgrimage'. The testator declared that after three years the house was to pass to his son, Thomas, on condition that he and his heirs would keep an 'honest obit by note' in Luton church for the testator's parents souls, his wife's soul and for the souls of his friends, perpetually.<sup>61</sup>

Such conditions are still evident in the Bedfordshire wills at the end of the period under study, only a few years before the onset of the momentous religious changes of the century. John Baker of Stretely, whose will is dated the 18th of March

---

<sup>60</sup> Beds. C.R.O. ABP/R 3, p. 8d.

<sup>61</sup> Beds. C.R.O. ABP/R 1, p. 112.

1533, left his house with appurtenances in Pulloxhill to his son John, who was to keep an obit for his father in Stretely church. If John died without heirs, or if he failed to keep the obit, the house was to pass to the testator's son William, under the same conditions. If William or his heirs also refused to keep the obit, the testator declared that the house was to pass to the church of Stretely and in default of the prayers being performed, to the church of Pulloxhill.<sup>62</sup>

A bequest of land could also be made contingent upon the good behaviour of the beneficiary. Thomas English, of Ravensden, for example, who made his will on the 15th of January 1509, left his house and six acres of land to his wife for life and then to his son John, 'if he please his modyr well'. If John did not please his mother, she was instructed to sell the property.<sup>63</sup> And John Lord of Potton (will dated the 20th of June 1530) left his son John the messuage upon which he was already dwelling, on condition that he was of good and honest behaviour; if not, the property was to be sold and the resulting money disposed of in deeds of charity and alms.<sup>64</sup> Simon Sakwyle, a gentleman of Riseley, who made his will on the 20th of January 1512, left his lands in Riseley and in Finedon (Northamptonshire) to his son Thomas on condition that he:

be wyse, Sadd and discrete and to kepe my said londs ... with owt waste  
and to be Governed by his mother and tham that are his friends.

If Thomas failed to fulfil these conditions, the testator declared that the property was to pass to his daughters, Jane and Margaret.<sup>65</sup> Again, it is impossible to determine whether these and similar conditions imposed by other testators were being directed at the heir at law, or whether the beneficiary named is a younger son. Furthermore, the

<sup>62</sup> Beds. C.R.O. ABP/R 3, p. 90d.

<sup>63</sup> Beds. C.R.O. ABP/R 1, p. 63d.

<sup>64</sup> Beds. C.R.O. ABP/R 3, p. 29d.

<sup>65</sup> Beds. C.R.O. ABP/R 1, p. 132d.

property enfeoffed and referred to in the will may not be the entire landed estate of the testator, and the beneficiary, if he is the heir at common law, may therefore not be disinherited entirely should he fail to meet the imposed conditions.

Reference to marriage was frequently made in connection with a condition attached to a bequest of real property, and was not always directed at a female beneficiary; John Flat of Pertenhall, who made his will on the 19th of November 1524, left some land to each of his sons but declared that if his son, Bartholomew, married, then the house and land left to him would be 'departed among my children aforesayd'.<sup>66</sup> John Flat gives no explanation of these terms, stating only that it is his 'mynd' that this condition will obtain.

Some testators sought to ensure that their widows or children who were not named as beneficiaries of real property in their wills, would receive shelter or support from those who were bequeathed land. John Elvee of Wootton, who made his will on the 15th of June 1513, left a house 'in Church end' together with two acres, three roods of land to his son Robert and the residue of his real property to his son John and each was to be the other's heir. This testator declared that whoever held the property left initially to his son John, was to provide a chamber in the house for the testator's widow to dwell in, and was also to provide her with meat and drink.<sup>67</sup> And John Gedding, also of Wootton (will dated the 12th of October 1505) left his 'place' to his wife Elizabeth, for her lifetime and then to his son William, who was to pay to the testator's son John and his heirs, ten pounds in ten years, in annual payments of twenty shillings. If William refused to pay the money to his brother, then ten acres of land were to be taken from William and given to John.<sup>68</sup> John Gedding's will may be an example of a testator attempting to keep his main holding of land intact for the heir

---

<sup>66</sup> Beds. C.R.O. ABP/R 2, p. 35.

<sup>67</sup> Beds. C.R.O. ABP/R 1, p. 157.

<sup>68</sup> Beds. C.R.O. ABP/R 1, p. 101d.

at law, in which the division of his real property was only sanctioned if the heir refused to provide monetary support for his younger brother. It is possible, however, that the testator's son John, was his elder male child and the land left to William was property taken from the main holding. The money payment might therefore have been a form of compensation paid to the heir at law for the loss of the property, or as a form of mortgage for the purchase of the land. Thus, the implications of an apparently straightforward condition attached to a bequest of real property are not always easy to interpret.

Conditions attached to bequests of real property were also used by testators in an attempt to ensure the future welfare of minor children. Thomas Wales of Houghton Regis, for example, whose will is dated the 27th of January 1505, left to his wife his:

hed place on condition that she shall bring up her children that be young till they can help themselves.<sup>69</sup>

And Thomas Goldyngton of Houghton Conquest, who made his will on the 24th of August 1518, bequeathed to his wife 'if that she live', two houses with land belonging, for her lifetime, 'and that she keep my children or else she shall not enter my lands'.<sup>70</sup> It is impossible to establish whether these testators were convinced that their wives were lacking in maternal instinct or whether such conditions reflect a fear on the part of the testator that if his spouse remarried, or saw the opportunity of another marriage, she would abandon or neglect their children in order to please a future husband. In the case of Thomas Goldyngton, it is possible that the children were not his wife's natural offspring and he feared that she might not treat them satisfactorily after his death. Such conditions provide almost the only overt declarations of concern and affection for children by the group of testators under study, although it must be said

<sup>69</sup> Beds. C.R.O. ABP/R 1, p. 73.

<sup>70</sup> Beds. C.R.O. ABP/R 1, p. 234.

that the provision in wills for offspring was itself an indication of concern and desire on the part of the testator to ensure the future well-being of his family.

### **The Enforcement of Conditional Bequests**

The Bedfordshire wills also indicate how the testator's wishes concerning a bequest of land would be enforced. John Wingate of Chalgrave (whose will is dated the 8th of April 1532) left a parcel of land called Masons to his wife for life, and declared that she was to keep five masses. After her death the land was to pass to the testator's daughter Elizabeth under the same conditions. If either his wife or his daughter failed to keep the specified masses, John Wingate declared that the churchwardens of his parish were to enter the property to their own use. It is not clear from the wording of the will whether the testator is asking that his heirs be evicted by the churchwardens should they fail to comply with the terms of the will, or whether the wardens are simply to 'enter' and remove property to the value of five masses.<sup>71</sup> And John Cranfield, a husbandman of Cardington, who made his will on the 27th of March 1524, indicated that churchwardens could be instrumental in the eviction or deposing of a beneficiary. This testator divided his lands and tenements between his sons and declared that if any of them tried to sell their inheritance:

it shall be lefyl for the lord of Cardington and the churchwardens to enter upon it and sell it

thus preventing the heir from enjoying the profits.<sup>72</sup>

The influence of the Church, through the medium of the ecclesiastical unit of the parish could, therefore, apparently be brought to bear on the practical

---

<sup>71</sup> Beds. C.R.O. ABP/R 3, p. 59.

<sup>72</sup> Beds. C.R.O. ABP/R 2, p. 63.

implementation of a will of land. Whatever the common law's view on the limitations of ecclesiastical jurisdiction, in practice, the Church's involvement in, and authority over wills of land may have been far from negligible.

Such action was not always confined to the churchwardens or to the fulfilment of a condition. Thomas Knyvett of Elstow, whose will is dated the 1st of June 1523, declared that if both his daughters died, then the churchwardens of Elstow, with the 'oversight and counsel of five or six of the best of the parish' were to sell the house and land left to the testator's daughters. Forty shillings of the resulting money was to be paid to the convent of Elstow for prayers, while the residue was to be divided between charitable deeds, such as the mending of the highway, and the Church.<sup>73</sup>

Burgess has found that wills made by inhabitants of late medieval Bristol 'evoke almost nothing of the parish community'. He has used evidence of similar community action on behalf of a dead individual contained in the Bristol archives, but not referred to in that individual's will, to demonstrate this limitation of the group of wills which he studied. The Bedfordshire testators who did envisage, or ask for such action in their last will, indicate that it is unwise to generalize from a small sample of wills from one particular region or locality.<sup>74</sup>

### **The Influence of Custom on Conditions Attached to Bequests of Land**

Although it has been observed on page 183 of this study, that the device of the use could be employed to circumvent customary rules pertaining to the descent of real property, the Bedfordshire wills contain some evidence which suggests that custom could, in turn, influence conditions and provisions attached to a bequest of land which

---

<sup>73</sup> Beds. C.R.O. ABP/R 2, p. 22.

<sup>74</sup> Burgess, 'Wills and Pious Convention', pp. 18, 28, 29.



was the subject of a declaration of uses. John Crawley of Luton, who made his will on the 24th of May 1519, bequeathed the house in which he lived 'called Plentisse' to his wife Joan, until his son reached the age of twenty-three, provided that she 'make no waste of my tymber'.<sup>75</sup> The Cranfield custumal of 1484, already referred to in this chapter, includes the following stipulation:

Also, the woman so holdinge, as before is saide [that is, holding her husband's property for her widow-hood] maye doe no waste nor spoile the woddess. And if she doe, the heire or any other person haveing the revercion maye enforme the homage thereof and if the waste be proved and founde by them then the woman's estate shalbe avoyded and the heire or any other person haveing the reversion payeing their fine shall enter.<sup>76</sup>

It is possible that a similar custom was practised in Luton and in other Bedfordshire parishes, for which no custumals have survived.

The Cranfield custumal further states that:

Also they saye that no coppie holder is responsible for any waste unless a widowe ...<sup>77</sup>

but the terms of this custom may have been enforced on other female beneficiaries of real property in that parish during the period under study. Edward Seth of Cranfield, whose will is dated the 20th of January 1531, left the residue of his goods, moveable and immoveable, to his 'servant' Agnes Milbroke, for her lifetime, if she remained sole and providing that there was:

---

<sup>75</sup> Beds. C.R.O. ABP/R 1, p. 122d.

<sup>76</sup> A. Jones, 'The Customary Land Market in Fifteenth-Century Bedfordshire', Unpublished University of Southampton Ph.D. Thesis, 1974, p. 224.

<sup>77</sup> Jones, 'The Customary Land Market ...' p. 70.

no waste made except the purpose be good and lefull.<sup>78</sup>

The reference to what was 'good and lefull' does suggest that although this testator may have been employing the device of the use to dispose of his real property as he wished (no wife or children are named by this testator), customary rules could still be invoked to control a beneficiary and could still be influential. Again, the interaction of the rules, principles and customs which governed the succession to real property in the early sixteenth century is apparent.

'Wastage' (presumably in this sense referring to the destruction or non-lawful usage of land) is referred to in the will of Richard Fields of Maulden (dated the year 1514) in which the testator left his house to his wife for her lifetime and declared that she was to:

make no waste of the ground but for the reparacion of the house'.<sup>79</sup>

Again, this condition apparently refers to timber and the Cranfield custumal, together with these references to the waste of woodland in the Bedfordshire wills, do appear to reflect a concern for a valuable and diminishing resource in that county in the early sixteenth century.<sup>80</sup>

Wording used in a will could clearly be influenced not only by a testamentary advisor, or the existence of a formulary, but also by other documents which related to the utility of property. The number and variety of the conditions attached to bequests of real property in the Bedfordshire wills provide an indication of the versatility of the device and the extent of the loss of freedom which the Statute of Uses brought about

---

<sup>78</sup> Beds. C.R.O. ABP/R 1, p. 37d.

<sup>79</sup> Beds. C.R.O. ABP/R 1, p. 193.

<sup>80</sup> Emmison has noted that 'before [the Elizabethan] period the increasing scarcity of timber, and therefore its value, was of serious concern... Unlawful felling or lopping of timber ... [is] found as frequently as pasturage offences [in court records].' ... *Home, Work and Land* ..., pp. 252-253.

in 1536. The return to 'compulsory primogeniture', which the statute effectively brought about, clearly meant not simply the inheritance of an individual's estate by a prescribed heir, but the loss of a wide-ranging and far-reaching control of the landowner over the future of their real property.

But are the conditions attached to bequests of real property of any utility for the historian? It has already been observed in chapter three that the evaluation of pious bequests is extremely difficult, and it must be said that beyond indicating the frequently reciprocal nature of landed and pious provision between the generations, conditions which are of a religious character are of limited interest. However, many of the conditions attached to bequests of land are of a mundane and domestic character and apparently provide some information on family relationships. At a general level, for example, the existence in the wills under study, of conditions which are made with the apparent intention of safeguarding minor children, indicate that concern for the welfare of offspring was not unknown in early sixteenth-century Bedfordshire. As with pious bequests, the influences on the inclusion and character of such bequests may be impossible to establish. A scribe or advisor may have prompted the testator to include such a clause, which may not reflect the concerns or anxieties of the testator during his or her lifetime.

Furthermore, the Bedfordshire wills may tend to emphasize the less pleasant side of family life and to anticipate bad or negligent behaviour on the part of widows and offspring. Non-conditional bequests (of a non-pious nature) were more likely to be made to those beneficiaries who were held by the testator and his or her advisors, to be trustworthy and efficient.

On an individual level, therefore, the origin of, and motivation for, a mundane condition attached to a bequest of land may be just as difficult to interpret as one of a pious character and may have little to reveal about the nature of family relationships.

Such conditions provide a partial, and fleeting glimpse of a testator's family life and may not even reflect that testator's own and unbiased view of his family and circumstances.

### **Age at Inheritance**

Testators also used their wills of land to record the age at which they wished a beneficiary to enter the property bequeathed to them. By the period under study, the age of majority at common law had become fixed for most purposes at twenty-one, although as Thomas observes:

The most favoured alternative legal age of adulthood was twenty-four complete, probably because this was (wrongly) thought equivalent to the Roman law majority of twenty-five.

This later age of majority may have been favoured by the wealthier sections of society.<sup>81</sup>

For copyhold property the age of inheritance had become established during the medieval period at fourteen. Thus it is unsurprising (since testators bequeathed both freehold and copyhold property in their wills of land) that as Thomas has already noted, 'The age of inheritance envisaged by will-makers for their sons varied considerably and cries out for more investigation'.<sup>82</sup> The exclusion of female offspring from a discussion of inheritance practices is again evident in Thomas's words.

The ages at which the Bedfordshire testators envisaged beneficiaries of real property entering upon their inheritance ranged from fifteen to twenty-eight years.

---

<sup>81</sup> Thomas, 'Age and Authority ...', 227.

<sup>82</sup> Thomas, 'Age and Authority ...', 228.

Females may have been expected to enter upon real property at an earlier age than male beneficiaries. Two Bedfordshire testators who bequeathed realty to a female other than their wife also specified the age at which their beneficiary should take possession; Hugo Lecton of Southill, who made his will on the 17th of June 1529, left the 'hed place' in which he lived, to his wife until his daughter came to the age of eighteen years.<sup>83</sup> And Master William Westerdale, Bachelor of Canon Law and parson of the church of St George of Eyeworth (whose will is dated the 18th of August 1530) left a tenement in Biggleswade to Anne Swenow (whose relationship to the testator is unclear), at the age of eighteen years. Until then, the testator's executors were to take the profits of the tenement and save them for the beneficiary.<sup>84</sup>

With so few testators leaving real property to a female and declaring the age at which the beneficiary was to inherit, it would be unwise to draw any firm conclusions about the relative ages of male and female inheritance. Four of the Bedfordshire testators who bequeathed immoveable property to a male and who also specified the age at which the beneficiary was to enter the property declared a similarly youthful age of inheritance as Hugo Lecton and William Westerdale had for their female beneficiaries. John Coke of 'Bluntisham' (possibly Blunham) who made his will on the 10th of September 1512, left his dwelling house to his son John at the age of sixteen years, and all his 'per' lands and copyhold meadow to the same son at twenty years.<sup>85</sup> Thomas Stanton of Caddington, whose will is dated the 12th of May 1518, bequeathed 'the house that I dwell in myself' to his son William and continued, 'I will

---

<sup>83</sup> Beds. C.R.O. ABP/R 3, p. 4d. Spufford has found evidence in sixteenth-century Cambridgeshire wills which indicated that females in that county also inherited land earlier than their male counterparts, Contrasting Communities..., p. 112.

<sup>84</sup> Beds. C.R.O. ABP/R 3, p. 34d.

<sup>85</sup> Beds. C.R.O. ABP/R 1, p. 167. 'Per' lands may have been those which had been enfeoffed, see for example, Holdsworth, A History..., vol. iv, pp. 432-433.

that William my Sonne enter to the forsayd when he come to the age of xviii years'.<sup>86</sup> (The tenure of the property is not specified). Elen Percival of Arelesy (will dated the 10th of January 1521) left her house and land to her son, Robert Ept 'when he comyth to lawful age' and declared that her executors should have the rule of her real property until her children 'come to lawfull age, that is to say xv yerys'.<sup>87</sup> This testator also asked that, 'my copiehold should be sold at the mind of myn executors', indicating that the property left to her son may have been freehold. (Although, this may be an example of careless wording by the testator or her scribe, and Mrs Percival actually meant all copyhold land, except that left to Robert Ept); the mortal illness of many of the Bedfordshire testators at the time of the making of their will was probably not conducive to careful and precise wording and terminology. However, if Mrs Percival was indeed referring to freehold property to be entered upon by her son at fifteen years, this will is an indication that the inheritance of freehold property was not entirely governed by common law rules, and that references in the wills to 'lawful age', where no numerical age is stated should not be assumed to be the age of twenty-one. And Robert Baryngham of Odell, who made his will on the 25th of July 1531, left his house and appurtenances in Odell to his son Richard 'at the age of xvii yere'.<sup>88</sup> (No indication is given of the tenure of this property).

The vast majority of testators who bequeathed realty to a male beneficiary and specify the age at which he is to enter the property, declare that age to be nineteen years or over. The ages of twenty, twenty-one and twenty-four were equally represented in this group of wills, with only one testator declaring the age of entry to land to be nineteen and twenty-three years respectively. Three testators made twenty-two the age of entry for their beneficiary and two testators delayed the age of

---

<sup>86</sup> Beds. C.R.O. ABP/R 2, p. 82.

<sup>87</sup> Beds. C.R.O. ABP/R 2, p. 112.

<sup>88</sup> Beds. C.R.O. ABP/R 3, p. 48.

inheritance for their beneficiary until the age of twenty-eight. John Spencer of Pavenham 'Gent', who made his will on the 16th of January 1531, declared his wish that his son would enter the real property left to him in his father's will on his twenty-eighth birthday, and until that time would apply himself to 'lerne the law', John Spencer threatened that if his son:

will not so take payne and lerne substantially then I will he be servand and get his lerneng ther by till the said xxth day of May.<sup>89</sup> [his son's twenty-eighth birthday.]

This late age of entry to land was not however, solely the preserve of those who described themselves as belonging to the gentle classes of society and their offspring. John Thrale of Luton, whose will is dated the 19th of December 1505, who does not ascribe any social status to himself, or note his occupation, left to his servant, John Colyn, eight acres of land and a close, 'when he comes to the age of twenty-eight', provided that he keep the testator's obit in Luton church, annually, forever.<sup>90</sup>

So few of the Bedfordshire testators specify a numerical age at which their beneficiary is to enter real property and merely state 'at lawful age', and so few specify the type of tenure in which the land is held, or as has been observed in chapter four, record their own occupation or social rank, that it is impossible to correlate a particular age of entry to land with tenure or with social position. However, it is clear that in early sixteenth-century Bedfordshire, the common law age of majority was not always used as a rule for the age of entry to real property. The desire of sixteenth-century common lawyers to 'prolong the disabilities of infancy' by refusing to countenance the early adulthood of burgage tenure and by imposing disabilities on the

---

<sup>89</sup> Beds. C.R.O. ABP/R 3, p. 78. John Spencer may have been referring to the widespread practice (among the gentle and noble classes of the medieval period) of sending children into service of other noble households, in order to learn the manners and skills appropriate to their rank. See, for example, Houlbrooke, *The English Family* ..., p. 150.

<sup>90</sup> Beds. C.R.O. ABP/R 1, p. 17d.

early inheritance of heirs at gavelkind, socage and copyhold<sup>91</sup> may have been considerably undermined by the use.

Some discrepancies between the common law age of majority and the age at inheritance of real property apparently continued after the Statute of Uses had been imposed.<sup>92</sup> It is possible that the freedom of choice in this matter granted to the individual landowner by the use was not easily abolished.

---

The early sixteenth-century wills of land used in this study provide information which allows a different perspective on the study of inheritance to be achieved. The concentration of historians of inheritance practices on the common law rule of primogeniture, may have prevented a full understanding of the disposition of land at death, to offspring and beneficiaries other than the heir at common law, by means of the device of the use. The Bedfordshire wills indicate that pre-1540 wills of land can make a major contribution to the study of inheritance of land by, and consequently attitudes to, a wide variety of family members and their place in the structure of society.

However, the interpretation of the information provided by these wills is problematic, and cannot be achieved satisfactorily without a proper understanding of the nature and function of the document under study. It cannot be deduced from the wills alone how much the development of the use diminished the common law rules pertaining to the descent of real property. The probably high incidence of intestacy

---

<sup>91</sup> Thomas, 'Age and Authority ...', 222; M.de W. Hemmeon, 'Burgage Tenure in Medieval England', *Harvard Historical Studies*, xx, 1914, 18; (Sir) William Blackstone, *Commentaries on the Laws of England...*, 2nd edition, Oxford, 1766-1769, vol. i, p. xvii; Pollock and Maitland, *The History ...*, vol. ii, pp. 436-444.

<sup>92</sup> Thomas, 'Age and Authority ...', 222; Lawrence Stone, *The Crisis of the Aristocracy*, Oxford, 1965, p. 597.



may have meant that the common law rules governed the descent of most individual's land.<sup>93</sup> On the other hand, wills were not the only means by which uses could be declared and thus do not provide a full picture of the effect or incidence of the device.

The development of the use may have had the effect of weakening the association between will-making and the last confession, but the relationship between the use and the last will was probably a symbiotic one; a use could be conveniently declared in a document which had moral and spiritual overtones that might help to ensure its fulfilment, and which could be recorded as part of the feoffor's overall preparation for death in the probate register of an ecclesiastical court. The use, on the other hand, allowed the discharging of spiritual and secular responsibilities, which a will embodied, to assume a wider and more practical base and provided a 'bridge' by which bequests of land came to be fulfilled through the principles and rules of law rather than by moral pressure.

---

<sup>93</sup> This point has already been made by, for example, Alan Macfarlane, The Origins of English Individualism: The Family, Property and Social Transition, Oxford, 1978, p. 84.

**CASE STUDY**

**THE WILLS OF ROBERT AND ANNE SPENCER**

The purpose of this section of the study is to examine in detail the wills of two individuals, Robert and Anne Spencer of the Parish of Cople.<sup>1</sup> Although testators' with the same surname and of the same parish are fairly plentiful in the group of wills under study<sup>2</sup> it is rarely possible to establish their relationship to one another with any certainty. The wills of Robert and Anne Spencer are an exception, and provide sufficient information for the relationship of the testators (that of husband and wife) to be established with a high degree of confidence.

The wills of Robert and Anne are recorded consecutively in the second probate register of the court of the Archdeacon of Bedford, despite the fact that the original wills may have been made some years apart (see below). It is not entirely clear why this is so, but the explanation may simply be that the husband (who had clearly died before his spouse) was not long survived by his widow. Whatever the period of time between their deaths, the Spencer's wills may have been presented together at the probate court.<sup>3</sup>

The proximity of these two wills in the register is not, of course, the only indication of the testators' relationship. Each testator provides sufficient identification of himself or herself to support this deduction and the contents of the two wills and the identity of the beneficiaries leave little room for doubt. The wills of Robert and

---

<sup>1</sup> Beds. C.R.O. ABP/R 2, pp. 174-176.

<sup>2</sup> See for example, the wills of William Joye and Thomas Joye, both of Bedford, whose wills are dated respectively 20 October 1503 and 24 March 1505, Beds. C.R.O. ABP/R 1, pp. 37d and 82d; also the wills of William Core, Marjory Coore and Robert Coore, all of Potton, whose wills are dated respectively 1 October 1505, 14 May 1527 and 21 October 1524; Beds. C.R.O. ABP/R 1, p. 74d, and ABP/R 2, pp. 32 and 78.

<sup>3</sup> Wills of other 'husband and wife' testators are recorded consecutively in the registers under study. See for example, the wills of John and Alice A Light, of Goldington, Beds. C.R.O. ABP/R 1, p. 89, dated 15 August 1505 and 17 August 1505 respectively. Also the wills of Harry Est and Joan Est of Marston Moretaine, dated 2 September 1506 and 13 February 1507 respectively, Beds. C.R.O. ABP/R 1, pp. 97-97d.

Anne Spencer therefore provide the opportunity for a detailed, complementary and comparative case study.

### The Will of Robert Spencer

In dei nomine amen xx die mensii March Anne Domini millesimo quadgentisio xx, I Robert Spencer of Cople in the countie of Bedford Beyeing of hole mynd loved by almyghty god make this my testament and last will in forme folowyng.

First I bequeath my sowle to almyghty god our blessed lady saint Mary and to all the holy company of hevyn my body to be buried in our lady chapel of Cople and my best beast as the custume is I bequeath to my mortuary and to every one of my god children an ew shepe and to the freers of Bedford for a trentall to be sayd as shortly as goodly may after my decease xx s. And I will that my feoffees of my lands and tenements suffer myn executors to take the issues and profits of all therein the mease land mede and pasture in Southmyll in the parish of Blunham that my sonne Batell now occupieth and a mese with the land mede and pasture in Southmyll in Honeyden in the parish of Eton only except and until they may therewith pay my detts and performe my bequests following. First I bequeath to the high altar in Cople for my tyths forgotten xs. and to the necessities of the church of Cople 20s and to the mending of the streets in the same towne xs and I will that myn executors pay to the mortifying of the brotherhood in Blownham or to the ledying of the steple there five pounds ... to the church of Southo toward a crosse vi s viii d. To the church of Sandy vis viiid. To the college of Northill vis viiid. Item to iiii order of friers in Cambridge and the iiii therein in Bedford syther of them iiis ivd. to the bellys of Blownham and the torches there either of them iiis ivd. And I will that myn executors pay to John Mordaunt such money as it shall please him to demand of the acceye for the wardship and marraige of Hugh Hasildon and also that they pay to Richard Monygham due to him of the acrage of xv pounds that was bequeathed to Margary his wife by her father and also the halfdole of her necessary weddyng apparel of the hedde xxs. and I will myn executors find an honest priest five years next after my decease to say masse and other divine service in the church

of Cople for my sowle the sowles of my awncestors and friends and the sowles that I am bound to do for / and if it happen my sonne John to decease before his mother as almyghty god forbede then I will a priest shall sing for my sowls and sowle of my said sonne and for the sowles of my friends and his as is abovesaid other v years after his decease and I bequeath to eyther of my sonne Dickons sonys to their scoling xvs and to his daughters marriage 5 marks and to Batells daughters marriage other 5 marks and to either of my sonne Johns daughters if they have any brother alive tyme of their marriage six marks. And I will to Elizabeth Lawrence to her marraige if she rulyd and advised by myn executors xv s and to Agnes Bays x s and to robert Symond xx s yerely during his life / and I will to either of the houses of Newnham Elstow and Cauldwell xs to pray for my soul as they shall their devocion have them. And I will that my feoffees suffer my daughter Alys to occupy my house she dwelleth in with the land mede and pasture that longeth to it for terms of her life paying the owt rent and keeping sufficient reperacion and doing no waste providing always that if her husband by mysruled or disordyd that my executors be with him that then I will my said feoffees shall suffer myn executors and the longer liver of them to take the profits of the said mese land mede and pasture during the life of my said daughter Alice to pay and dispose of the sayd profits according to my mynd which they know truly as I put therein trust and I will my daughter Dickens the rent of my house in Honeydon with the land mede and pasture to it for terme of her liff the reparacion kept and the owt rents paid. And I will that my executors and my herrys after them shall kepe my obit yerely with the profit of the house and land that was Agnes to the use of Thomas Reeve for evermore and I will that Anne my daughter in law shall have the rent of all my wifes lands and tenements late Bushell after the decease of my said wife to term of life of the said Anne. The Remaynder ther to John my Sonne and his herrys. And I will that after my debts payd and legacies performed that my feoffees shall suffer my wife to take the issues and profits of all my said lands and tenements during her liffe and after her decease to my son John Spencer and his herrys.

The residue of goods and catalls moveable and immoveable above not bequeathed I will and bequeath to Anne my wife, John my sonne, Thomas Dicken and Robert Spencer whom I make my executors trusting in them that they will see my will performed and I will to either of the said John,

Thomas and Robert for their labour in this belief xx s. These being witness Ser Thomas Bamford vicar of Cople, Henry Manfield, Thomas Cooch and other moo. Given at Cople the day and year abovesaid.

Robert Spencer's will was made on the 20th of March 1520. No probate act is recorded at the end of entry in the register. The will is in English, except for the opening words 'In dei nomine Amen' and the date, and the words 'dat apud cople die anno' at the conclusion of the document.

It is not clear who wrote the will at the time it was uttered by the testator (unless he wrote the original will himself), but the name 'ser Thomas Bamford, vicar of Cople' is included in the list of witnesses, and he must be considered as a possible candidate for the scribe of the will.

Although the document, as it is recorded in the probate register, can be described as an integrated will and testament, there being no distinct space between charitable bequests of personalty and the bequests of land, or a declaration before the start of the bequests of realty that 'this is the last will of ...', the testamentary bequests come first, followed by bequests of immoveable property.

The testator began his will in conventional manner; he identified himself and his parish and declared that he was in a fit mental state to make his testament. No rank or occupation is recorded. The bequeathing of the soul to God is also worded traditionally 'to almighty god our blessed lady saint Mary and to all the holy company of hevyn'. Robert Spencer then asked that his body should be buried in 'our lady chapel of Cople', the implication being that he was a man of prosperity and some standing in his own community.

Next, the mortuary payment of the testator's best beast 'as the custume is', is recorded and is followed by the gift of a ewe sheep to each of Robert Spencer's god-children (who are not identified), and a bequest of twenty shillings to the friars of

Bedford for a trental 'to be sayd as shortly as goodly may after [the testator's] decease'.

At this point in the will, Robert Spencer declared that his *feoffees to uses* were to 'suffer' his executors to take the 'issues and profits' of some of his lands and tenements, 'only except and until they may therewith pay my detts and performe my bequests following'; the implication being that the bequests which came before this declaration were to be paid from the testator's savings and, in the case of the bequests to his god-children, from his stock. The bequests following the declaration to the feoffees were to be paid from the profits of realty. This view is lent some support by the wording of the bequest immediately after the declaration 'First I bequeath to the high altar in Cople for my tyths forgotten xs' as if this bequest began a new section of the testament. It is however, possible that the testator simply remembered at this stage of the drawing up of the will that it would be wise to make such a declaration to his feoffees in the fairly public and solemn medium of his will in order to ensure that his last wishes would be fulfilled, and the division of the testamentary bequests is accidental.

The testator's description of the specified lands and their location is of a kind to be found in many of the Bedfordshire wills and reflects the extent to which verbal communication and the local knowledge of executors and feoffees must have supported the information given in the will, and indeed, the extent to which unwritten testimony may still have pertained in everyday life at that time. Robert Spencer described the real property from which the profits were to be taken to fulfil his will as:

the mease land mede and pasture in Southmyll in the parish of Blunham  
that my sonne Batell now occupieth and a mese with the land mede and  
pasture in Southmyll in Honeydon in the parish of Eton...

No acreage is given, no boundaries recorded (although some Bedfordshire testators do

record the boundary of their land with their neighbours). It is possible that a separate indenture had been drawn up by the testator, in which the terms of the use are more fully rehearsed, although no such document is mentioned in the will.

Following the bequest to the high altar of his parish church for forgotten tithes, Robert Spencer made a further bequest to his own and neighbouring parish churches, to religious houses, and to the mending of the streets in Cople, and declared that he desired his executors:

to pay to the mortyfying [that is, amortizing] of the brotherhood on Blownham [Blunham] or to the leddyng of the steple there five pounds.

These pious bequests are followed by a declaration that the testator wished his executors:

pay to John Mordaunt such money as it shall please him to demand of the acceye for the wardship of Hugh Hasildon.

During the sixteenth century the heirs to lands held by knight service and other military tenures and whose fathers died before they had reached their majority passed into the wardship of the lord of the lands. Wardship was a valuable practice since the guardian enjoyed the right to take profits of that part of the ward's lands which came under his control. The guardian also decided whom the ward should marry. Robert Spencer was apparently asking his executors (who were his sons and his wife) to purchase the wardship of Hugh Hasildon from John Mordaunt.<sup>4</sup> No indication of

<sup>4</sup> Houlbrooke has observed that the sale of wardships greatly increased during the sixteenth century and that faced with the widespread hostility which these sales provoked the Crown began to show a greater readiness to take the wishes of fathers and kinsfolk into account. As a result of this, the proportion of wardships sold to mothers, mother's kinsfolk, wards themselves, or trustees appointed by their fathers grew from a fifth to a third between Edward the Sixth's reign and the end of Elizabeth's reign. *The English Family* ..., p. 220. For a general history of wardships, see H.E. Bell *Introduction to the History and Records of the Court of Wards and Liveries*, Cambridge, 1953. The Mordaunts were a prosperous and influential Bedfordshire family. John Mordaunt was later ennobled and was aged about thirty-eight when Robert Spencer made his will. McGregor, *Bedfordshire Wills*..., p. 71.



Hugh Hasildon's relationship, if any, to the testator, is given – another indication of how far removed the purpose and language of a last will and testament were during the period under study, from a dry but detailed legal document.

This intention is followed by a further request to the executors of the will that they should:

pay to Richard Monyngham due to him of the acrage of xv pounds that was bequeathed to Margary his wife by her father and also the halfdole of her necessary weddyng apparel ... xx s.

Again, the relationship to the testator of those concerned is unspecified, and the historian is left to speculate on the full meaning of the intention. The fifteen pounds was apparently the outstanding amount to be paid on a mortgage on land which Robert Spencer was buying from Margary Monyngham. The land which Margary, as a *femme couverte*, had inherited, was under her husband's control. The 'half dole of her necessary weddyng apparel' may refer to an agreement made between the testator and Margary Monyngham's father that Robert Spencer would be allowed to purchase Margary's inheritance, for a specified sum which included the provision of some of her wedding clothes.

Next, the testator made further provision for masses 'and other divine service' to be said after his decease, and included provision for the eventuality of his son dying before his (the son's) mother, 'as almyghty god forbede'. The wording of this phrase, variations of which occur in other Bedfordshire wills, may be that of Robert Spencer's testamentary advisor or scribe, but undoubtedly expressed the testator's own feelings. However, the formality of the phrase prevents any insight into the quality of the relationship which father and son enjoyed, another illustration of the difficulties encountered by the historian using information derived from wills to evaluate family behaviour.

The testator then revealed that at least some of his children are already married with offspring of their own, by making bequests to his grandchildren. Robert Spencer apparently felt that his grandsons and granddaughters required a different sort of preparation for adult life, according to their gender. His children's daughters are left money 'to their marriage', while their sons are provided with money 'to their schooling'. The granddaughters were more costly to the testator in this respect, being left five or six marks, while the grandsons' schooling drew a bequest of fifteen shillings each.

Then follows a bequest to an Elizabeth Lawrence (whose relationship to the testator is not specified) of fifteen shillings to her marriage 'if she [is] rulyd and advised by myn executors' and ten shillings to an Agnes Bays (no relationship specified) and 20 shillings yearly for life to one Robert Symond. It is possible that these three people were in the employment of Robert Spencer or may have been poor relatives for whom he felt some responsibility.

Next, the testator made another bequest for masses and prayers, to the religious houses of Newnham, Elstow and Cauldwell. This insertion of bequests for masses at several different stages of the testament does suggest a somewhat unstructured approach to the making of this will; it may have been drawn up over a period of days, or at times when the testator felt able to continue, or may simply reflect that the testator became anxious, as the will developed, to ensure that adequate provision had been made – further evidence of the degree of informality and freedom which existed within an apparently formal framework, where will-making was concerned. This bequest to the three religious houses completed the testamentary bequests.

The first reference to the future disposition of his real property occurs in a request to the testator's feoffees that they should:

suffer my daughter Alys to occupy my house she dwelleth in with the land mede and pasture that longeth to it for terme of her life...

However, this bequest was made conditional, not only upon the payment of the 'owt rent' and on the proper maintenance of the property, but also on the good behaviour of the daughter's husband. Should the husband be 'disordyd', the property was to be administered by the executors, who were to dispose of the profits 'accordyng to my mynd which they know truly as I put therein trust', during the life of the said Alice (sic). Such a condition may have imposed the testator's will on his daughter and son-in-law long after his death, but the intention may not have been merely doctrinaire. Robert Spencer may have used this bequest to protect his daughter from the less attractive aspects of his son-in-law's character and to provide her with some measure of power over her spouse.

The testator's daughter 'Dickens' was left 'the rent' of a house in Honeydon with land mead and pasture, for the term of her life 'the reparacion kept and the owt rents paid', and Robert Spencer's daughter-in-law Anne, was left 'all my wyffes lands and tenements ... after the decease of my said wife', for the term of her life. Since the testator would not in theory have any power to dispose of land which was his wife's in her own right, this bequest may refer to freehold property which was to be his wife's dower.

There is also a request that Robert Spencer's executors and heirs should keep a yearly obit with the profits of a house and land 'that was Agnes to the use of Thomas Reeve for evermore'. Since the relationship, if any, of 'Agnes' or of 'Thomas Reeve' to the testator is unclear, it is difficult to interpret this bequest beyond its obvious purpose. The wording seems to imply that Thomas Reeve was the *feoffee to uses* of this particular house. Robert Spencer may therefore have used different feoffees for various pieces of property (which may have been enfeoffed at different times). This particular enfeoffment apparently took place simultaneously with the making of the

will.

Robert Spencer then bequeathed 'the Remynder ther' to his son, John and his heirs, meaning that all the real property mentioned in reference to this bequest was to pass to his son, and his heirs on the death of those who were beneficiaries for life. The inclusion of the phrase 'and heirs' created an entail. Thus, if the testator's son John was also his heir at common law (this is not specified) the use would be allowed.

Robert Spencer further declared that, after his debts had been paid and his legacies performed his feoffees were to 'suffer' his wife to take the issues and profits of all 'sayd lands and tenements' during her life, and after her decease they were to pass to his son John. There follows a residuary clause by which 'the residue of goods and catalls moveable and immoveable above not bequeathed', are left to the testator's wife Anne, his son John and 'Thomas, Dickon and Robert Spencer' (whose relationship to the testator is not specified), who are appointed as executors (it is unusual to find such a large group of executors), and the testator declares that he is 'trusting in them that they will see my will performyd'. John, Thomas and Robert Spencer are 'left for their labour in this belief' twenty shillings (Mrs Spencer and 'Dickon' are not, apparently, to benefit in this way). The will concludes with the naming of the witnesses 'Ser Thomas Bamford vicar of Cople, Henry Manfield, Thomas Cooch and "other moo"', and the words 'given at Cople the day and year abovesaid'.

To sum up; Robert Spencer's will indicates that he was a prosperous parishioner of Cople, in the east of the county and that he was survived by a wife, several children and grandchildren. He apparently had some savings and these, and the profits of at least some of his real property, was to be used (the latter by means of the device of the use) to pay his debts and perform his will. There is no mention in the will of personal items such as weaponry, clothing or silverware, all bequests are

apparently to be fulfilled with money or livestock. Robert Spencer's conception of 'making a good end' apparently involved provision for masses and prayers, provision for the marriage of his granddaughters, schooling for his grandsons, the purchase of a wardship, and the satisfactory disposition of his real property. One part of this disposition was intended to curb the behaviour of a possibly wayward or difficult son-in-law. The testator made no affectionate references to his family, and in this sense his will presents a fairly formal picture. The relationship of some of the beneficiaries to the testator is unclear, making a full interpretation of the implication of some of the bequests difficult. Robert Spencer's will is representative of the group of wills under study in that it provides a partial picture of, and selective information on, the testator's concerns, family and property.

### The Will of Anne Spencer

In die nomine amen the xiiii die Decembris anno domine millesimo quadgentisio xxiiii I Anne Spencer widow lat the wife of Robert Spencer Gent. being of hole mind and memory make this my testament in forme following. First I bequeath my soul to almyghty god and to his holy mother saint Mary and to all the company of heaven my body to be buried in the chapel of our lady in Cople church next unto my husband I bequeath to the high altar for tythes forgotten xx d. Also I give and bequeath to John Spencer the great brass pott ii spits. I give and bequeath to Elizabeth his daughter and my god daughter my wedyng ring my bright brasse pott the ii corn panne. Also I bequeath to Rose his daughter a little pott brokyn of the brynk a panne of ii galons a chaffer with a handell. Also I give to Agnes Batell the great pott that is brokyn on the brynk my red gurdell that was myn Awnt Adams. To Robert Hasildon my daughter's son my best pece a fetherbed a payr of shets a payr of blanketts a red coverlett a bolster. I bequeath to Thomas Hasildon his brother a pece of silver next the best a fetherbed a red coverlett a payr of sheetts a bolster. I bequeath to Thomas Batell the little pece of sheetts also I bequeath to every one of my sons Dykons children that is to say William Richard Robert Nicholas Francis and Elizabeth vi s viii d to

be payd at convenient leisure. Also I bequeath to Thomas Spencer vi s viii d. Also I bequeath to the fyndyng of a priest for a year to sing for my husbands soul myn and all my friends souls eight marks. John Hardyng to sing for one half year and Thomas Hardyng other did. yere to sing where my executors shall please. Also I bequeath to Elizabeth Spencer my son's daughter my best cow and to Rose her sister a calf of it and the other cow to Elizabeth Dycons and the other calf thereof to Palinders daughters and I bequeath to my daughter Alice all my shepe in the barne and I bequeath to Batell one of my putes and I bequeath to Gant my old black gown to his daughter a yard of white blankett to make it a petticote.

To Johan Piers my kirtell last made and to John Frank a smok. Also I bequeath to Thomas Dickons if that he make no claim nor bysnes for the rent of Honeydon ten s. To the debts of my husband of the money I make of my crop five pounds. The residue of all my goods not bequeathed I will that John my son to pay my debts and to distribute in alms to my sole whom I make my executor. These witness Ser Thomas Bamford, Richard Slade, Robert Newman, Robert Hasildon and other.

Anne Spencer's will was drawn up on the 14th of December 1524, four years and nine months after her husband's will was made. There is no proving act, or date recorded in the register, and it is impossible to know, therefore, whether Robert and Anne died within a short space of time. The will is written entirely in English apart from the opening phrase 'In dei nomine Amen'. There is no indication of who wrote the will, but Thomas Bamford's name (see page 209 above), appears in the list of witnesses. The will consists entirely of bequests of personalty, land is mentioned once and only in the context of a bequest of personalty (see below).

Anne Spencer began her testament in traditional and formal manner by recording her name and her status, 'I Anne Spencer widow lat the wife of Robert Spencer Gent.'. The testator thus revealed her husband's status, which he had omitted from his opening declaration. In this case, Amusson's suggestion that testators may have accorded themselves a higher social status than they actually enjoyed during their lifetime may have some weight; it is at least possible that Anne Spencer may

have sought to 'enhance' her husband's memory by describing him as a gentleman. However, the argument holds true, that in a small sixteenth-century community, it must have been extremely difficult to exaggerate the social standing or rank of an individual in the fairly public medium of a will. There is enough information in Robert Spencer's will to support Anne Spencer's description of her husband's rank.

Following her declaration that she is sound in mind and memory, Anne Spencer bequeathed her soul to God in similar, but not identical words to her spouse, and asked that her body should be buried in the Lady chapel of Cople church 'next unto my husband'. If the wills of Robert and Anne were written by the same scribe, he did not apparently use a formulary which included a set preamble.

No mortuary payment is recorded, indicating, perhaps, that Mrs Spencer's estate was worth less than ten marks, but a bequest to the high altar for forgotten tithes was made (in contrast to her husband's bequest for the same purpose, Mrs Spencer leaves only 20 pence).

The bulk of the testament is formed by a long list of bequests of personal goods, mainly to members of the testator's family, and which displays the meticulous itemization of personalty discussed on pages 71-72 of this study. For example:

To Thomas Hasildon my daughter's son ... a fetherbed a payr of shets a payr of blanketts a red coverlett a bolster ...

While her husband was content to describe the real property mentioned in his will in what to the historian seems to be the vaguest of terms, Anne Spencer described her personalty with care:

... I bequeath to Rose [the testator's granddaughter] a little pott brokyn of the brynk... Also I give to Agnes Batell the great pott that is brokyn on the brynk my red gurdell that was myn Awnt Adams...

Mrs Spencer bequeathed her wedding ring to a daughter of her son, John, and

apparently had some other items of monetary value to give. 'I bequeath to Thomas Hasildon [the testator's grandson] ... a pece of silver next the best'. Thus, in a household where items of silver were owned, pots with broken 'brynks' remained in service and were thought to be fit items to bequeath to a grandchild, although it is possible that the children were very young and these items were intended as playthings.

Bequests of household items, such as bedding were made to grandchildren of both sexes. Seven of the testator's grandchildren, William, Richard, Robert, Nicholas, Francis, and Elizabeth Dykons and Thomas Spencer, were bequeathed 6s. and 8d, each 'to be payd at convenient leisure' (these same words appear in Robert Spencer's will – another indication, perhaps, that Mr and Mrs Spencer used the same scribe).

A bequest of eight marks for masses and prayers to be said 'for my husbands soul myn and all my friends souls' occurs in the middle of the bequests of personalty as if the thought had occurred to the testator or her scribe that such provision should be made. Surviving formularies do not indicate that this was a usual or prescribed format. However, if Robert and Anne Spencer used the same testamentary advisor or scribe, the structure of their wills may be a result of his influence.

After bequests of livestock to various grandchildren, Mrs Spencer concluded her disposition of personalty with bequests to two individuals who were not, apparently, members of her family, and who may have been servants. 'To Johan Piers my kirtell last made and to John Frank a smok'.

Next came a bequest which suggests that there were still potentially troublesome members of the family, as there had been at the time that Robert Spencer's will was drawn up. Mrs Spencer bequeathed to 'Thomas Dickons if that he make no claim ... for the rent of Honeydon ten s.'. Robert Spencer had left his 'daughter Dickens' the rent of his house in Honeydon for her lifetime and this bequest



indicates that Anne Spencer feared that her son-in-law might make claim for a life interest in the property in Honeydon, should he outlive his wife. Robert Spencer had not apparently considered all eventualities concerning the disposition of his real property when it came to making his will. The device of the use gave a landowner considerable control over his or her land, even after death, but a use once declared was static and unchangeable – family life and relationships could develop in a variety of unforeseen directions which could undermine the effectiveness of the device.

Mrs Spencer then made a bequest of five pounds ‘of the money I make of my crop’ to ‘the debts of my husband’. The issues and profits of certain specified lands which Robert Spencer had left for the payment of his debts and the performance of his will had not yet apparently yielded sufficient money to fulfil the intention. This may indicate that Anne Spencer did not long survive her husband. However there was, in theory, no necessity for her to make this bequest, since Robert Spencer’s own will should have ensured that the profits of the specified lands would continue to be used until his debts had been settled. The implication may be that Robert Spencer’s will had still not been proved when his widow made her own testament and that she wished to add her own intentions to those of her husband.

Anne Spencer’s will concludes with a residual bequest to her son John whom she makes her sole executor with a request that he will pay her own debts and ‘distribute in alms to my sole’. Four witnesses, Ser Thomas Bamford, Richard Slade, Robert Newman, Robert Hasildon ‘and other’, are recorded.

Anne Spencer’s testament apparently provides the ideal foil for her husband’s last will. While Robert Spencer’s intentions were concerned primarily with the disposition and future well-being of his real property (not without reference to the future welfare of his family), and of the health of his soul, recorded in a slightly erratic if rather dry manner, Anne Spencer’s testament provides a more domestic

viewpoint.

While Robert Spencer's bequests of land provide somewhat limited information on the exact relationships of the beneficiaries with the testator and with each other, and the descriptions of the property are also fairly vague (due probably to the verbal or other documentary information given to feoffees and executors), Anne Spencer provides greater detail on the identity of some of her beneficiaries and on the bequests they are to receive. Anne Spencer's will therefore facilitates a fuller interpretation of some of her husband's bequests (we learn for example that the name Hasildon was that of one of the testator's sons-in-law, and it is therefore possible to assert that Hugh Hasildon whose wardship was discussed in Robert Spencer's will was his grandson).

Mrs Spencer's will also provides a view of her family sometime after the death of her husband, which can in turn give some indication of whether and how far her husband's last wishes were fulfilled. Although there is no record of Robert Spencer's will having been proved, his widow was apparently intending to carry out the spirit of his intentions.

It must be said that the two wills which form the basis of this case study cannot be assumed to be entirely typical of all the Bedfordshire wills. The view which they present of a husband concerned almost exclusively with his real property, and of his widow with her domestic concerns, should not obscure the fact that there are instances of male testators whose wills include bequests of domestic items and wills of widows who are much concerned with the real property in their tenure.

It must also be said that although Anne Spencer's will is predominantly 'domestic' it also provides glimpses of her wider concerns; she apparently felt the need to provide some of her own money to repay her husband's debts and was not content simply to pass this problem on to her son, or perhaps she merely felt the need

to remind her son of his father's wishes. Mrs Spencer, it must also be remembered, may have been responsible for much of her family's real property since her husband's death, a fact which the solely testamentary character of her will might obscure – although it is impossible to establish from either will how involved Anne Spencer was in the day to day running of these lands.

The wills of Robert and Anne Spencer reveal the concerns of two inhabitants of early sixteenth-century Bedfordshire as they made preparation for death in order to achieve a 'good end'. These concerns, as they are recorded in the copies of the wills in the probate registers under study, may not provide the historian with a complete picture of the obligations and responsibilities of the testators at the time their wills were written and those which are expressed may have been distorted by the formalized recording of brief or idiosyncratic utterances or gestures. Furthermore, the concerns expressed at the time of will-making reveal little of the testator's responsibilities and anxieties at other times. Despite these limitations, the Spencers' wills provide a valuable and possibly unique insight into the lives of an ordinary, if fairly prosperous, man and woman in the opening decades of the sixteenth century.

## CONCLUSION

The seven hundred and eighty Bedfordshire wills which form the basis of this study reveal the complex and individual nature of the document or intention known as a last will and testament. The evolving character of wills and of the laws relating to will-making are clearly demonstrated through the thirty-three year period during which the wills under study were made.

Studied in the context of the laws and customs relating to will-making and the process of probate, the Bedfordshire wills indicate how the character of an individual will was determined by a mixture of the circumstances of the testator, and the influences of scribes, advisors and would-be beneficiaries. To these determinants may be added the formal requirements of the ecclesiastical authorities together with those of law, local custom and pious convention. If the historian is to satisfactorily evaluate information derived from wills and testaments, these determinants and influences must be acknowledged and understood.

Once the essential framework of the character and function of wills and of the process of will-making is clearly established, reference to other surviving contemporary documents, and more particularly to the evidence provided by the whole will may facilitate a better understanding and the satisfactory interpretation of the document in question. The frequently simplistic view of the canonical will taken by many historians and the reduction of information derived from wills into statistical form has sometimes led to the distortion and misuse of the evidence which this abundant documentary source may contain.

However, while the complex and evolving character of the canonical will may defy satisfactory interpretation by the methods most frequently favoured by historians, the information which wills provide may still have value for the study of the society in which they were made and in which they functioned. For example, the wills under study

indicate that wills and testaments are, ironically, least suited for the purpose for which they have most often been used by historians; the value of these documents for the evaluation of both individual and community piety is apparently very limited indeed. This limitation, which is clearly a function of the incalculable mixture of the formal and the personal which is to be encountered in most wills, and of the place of pious bequests in the context of pious convention and other non-testamentary provision, is almost certainly a feature of any group of late medieval and early modern testaments.

However, if testamentary evidence cannot be easily or satisfactorily transcribed into a set of neat statistics, a proper understanding of the limitations of such evidence may itself convey to the historian a clearer picture of medieval piety. For example, an appreciation of the secular influences upon some elements of testamentary 'pious' provision (which did not necessarily detract from the ultimately spiritual purpose of such a bequest), may be of value to those who wish to understand the character of the relationship which existed between the laity and the monasteries in the decades leading up to the Dissolution.

A similar point may be made with reference to the study of bequests of land. Although wills may not reveal exactly, or even closely, the incidence of partible and non-partible succession in a particular locality over a given period of time (and may allow a very limited view of the testator's over all disposition of his estate), they do provide a clear and valuable indication of the dangers of regarding the common law as the only, or even as the most important determinant and regulator of the succession to real property.

The wills under study have revealed the value of the canonical will as an indicator of the application of the use by individuals from a fairly broad social spectrum. The versatile nature of this device, as recorded in the Bedfordshire wills, has provided a rare view of the late medieval individual exercising a degree of control over the disposition of their immoveable property (and consequently over their family and descendants), which

was denied them by common law.

Partly as a result of this freedom, the Bedfordshire wills have also provided a considerable and largely unexpected body of information on the role of women in that county in the early sixteenth century. Again, the information is not of a kind to support satisfactory statistical analysis. But the bequeathing of real property to females by both male and female testators may indicate that gender roles and expectations were not as clearly defined or rigorously imposed as some historians and the dry bones of the common law have suggested. This view has received further support from the fairly high incidence in the wills under study, of female appointees in official capacities. The high proportion of female executors is particularly noteworthy and there is some evidence to suggest that in Bedfordshire at least, female executorship was not confined to the personal estate of the testator. Some women clearly enjoyed considerable authority over, and involvement in, both the day to day running of real property, and the transition of some or all of that property from one individual, and from one generation to another.

The sphere of action of appointees and that of the courts which regulated their activities, also has implications for the wider study of early sixteenth-century society. Studied in the full context of the law of succession the Bedfordshire wills indicate that a very flexible approach to the jurisdictions of individual appointees and of the ecclesiastical and secular authorities, is necessary, if an understanding of the complexities of late medieval life is to be achieved.

If the proper evaluation of the wills under study requires a clear understanding of the intricacies of the medieval law of succession, the wills in turn provide an insight into that law which may complement the historians' view of the law as it is recorded in the statute book.

Overall, the Bedfordshire wills indicate that information derived from wills may have been used too simplistically, and that this may have been both a function of, and

have contributed to, a sometimes over-simplified view of the society which created the documents in question. The fleeting and limited view which the wills under study provide of an individual testator and of his family and property, is generally of less significance and utility than the view of that individual's interaction with the rules and customs which regulated life and death in that county in the early sixteenth century.

✱



## **APPENDIX ONE**

### **Facsimiles of the Wills of Three of the Bedfordshire Testators:**

- i. The will of Simon Sakwyle of Riseley, Beds. C.R.O. ABP/R 1, p. 132d, 131.
- ii. The will of Agnes Butt of Elstow, Beds. C.R.O. ABP/R 2, pp. 37-38d.
- iii. Partial view of the will of Anne Spencer of Cople stitched to the will of her husband Robert Spencer. Beds. C.R.O. ABP/R 2, pp. 174-176.

[illegible]



[illegible]

I have been thinking of you very much lately, and  
 of the many things that have happened since we  
 parted. I hope you are well and happy. I  
 have been very busy lately, but I have  
 managed to find some time to write to you.  
 I have been thinking of you very much lately,  
 and of the many things that have happened  
 since we parted. I hope you are well and  
 happy. I have been very busy lately, but I  
 have managed to find some time to write to  
 you. I have been thinking of you very much  
 lately, and of the many things that have  
 happened since we parted. I hope you are  
 well and happy. I have been very busy  
 lately, but I have managed to find some  
 time to write to you. I have been thinking  
 of you very much lately, and of the many  
 things that have happened since we parted.

[illegible]

[illegible][illegible]





## GLOSSARY

- Ambulatory:** A quality of the canonical will which allowed such bequests as 'all my personal goods' to include such property which came into the testator's possession after the will was made. Pollock and Maitland, The History..., vol. ii, p. 315.
- Amortizing:** (Mortifying). To alienate in mortmain, that is to convey property to a corporation (for example, a monastic order). McGregor, Bedfordshire Wills..., p. 185.
- Codicil:** A documentary supplement to a will, which adds to, varies or revokes provisions in the will. E.A. Martin (ed.) A Concise Dictionary of Law, Oxford, 1983, p. 65.
- Cestue que use:** The beneficiary for whom lands were held in use by the feoffee(s) to uses. The beneficiary was described in law French as 'cestue a que use le feoffment fuit fait' from which the title 'cestue que use' is derived. The plural is often rendered as the grammatically impossible 'cestui que usent'. Simpson, A History of the Land Law, pp. 173-174.
- Custumal:** A compilation of the customary laws of a manor, or other unit. Goody et al, Family and Inheritance..., p. 400.

**Cwide:**

Derived from 'saying' or 'dictum'. The Anglo-Saxon will of the ninth, tenth and eleventh centuries, of which the 'post-obit' gift was an important element. The Cwide had many characteristics of a will, but was largely confined to the wealthy and noble, and contained few traces of the ambulatoriness and revocability of a true will. Pollock and Maitland, , The History ..., vol. ii, pp. 317, 319, 392.

**Devise:**

A gift of land or other realty by will, either specific or 'residuary' to make such a gift. The recipient is a devisee. R. Bird (ed.) Osborn's Concise Law Dictionary, 7th edition, 1983, p. 118.

**Equity:**

Primarily fairness, or natural justice. A fresh body of rules by the side of the original law, founded on distinct principles, and claiming to supersede the law in virtue of a superior sanctity inherent in those principles... Equity is the body of rules formulated and administered by the Court of Chancery to supplement the rules and procedure of the common law. Bird, ... Dictionary, p. 134.

**Fee Simple:**

An estate which was heritable and would endure as long as an heir of the landowner was living. Both freehold and copyhold property could be held in fee simple. Pollock and Maitland, The History ..., vol. ii, pp. 13-14.

**Femme(s) Couverte(s):**

The descriptive legal title given to a married woman whose freehold property became her husband's while the marriage endured and whose personalty became her husband's property absolutely. Pollock and Maitland, The History ..., vol. ii, pp. 403-404.

**Feoffees to uses:**

The intermediaries to whom land was conveyed to be held to the use of another. Simpson, A History of the Land Law, p. 173.

**Meese:**

Messuage - a dwelling house with its out-buildings and land. Goody et al, Family and Inheritance..., p. 402.

**Nuncupative Will:**

A will declared by a testator before a sufficient number of witnesses, and afterwards reduced into writing, but not signed by the deceased. Swinburne, ... Testaments, p. 44; Gibson, Wills and Where to Find Them, p. xix.

**Post-obit gift:**

A gift of land (normally to the Church) made for 'good and all' by an individual but which does not take effect until after the donor's death. Such a gift was neither revocable, nor ambulatory, nor hereditative and thus could not be called a will. Pollock and Maitland, The History ..., vol. ii, pp. 317-319.

**Scala Celi:**

The name of a church in the Tre Fontane (Rome), to which an indulgence is attached. There were chapels and altars in England to which the same indulgence was attached, and masses said there were therefore thought to be particularly beneficial by some individuals. McGregor, Bedfordshire Wills..., p. 190.

**Seisen:**

Possession. Pollock and Maitland, The History..., vol. ii, pp. 29-30.

**Ultima voluntas:**

Last wishes. This term might also be used to describe a will of real property. Holdsworth, A History..., vol. iii, pp. 566-567.

**Socage:**

Described by Simpson as 'the great residual category of tenure'. Socage tenure was property held of the lord for any definite service other than knight service or spiritual service. Simpson, A History of the Land Law, pp. 11-13.

**Use:**

The device by which land was conveyed to a person or persons with the provision that they were to be held for the benefit of a beneficiary. Derived from the term '*ad opus*' meaning 'to be held for the benefit' of. Simpson, A History of the Land Law, p. 173.

## **BIBLIOGRAPHY**

### **1 Primary Sources**

#### **Bedfordshire County Record Office:**

Archdeaconry of Bedford Probate Records: Register wills

ABP/R 1, ABP/R 2, ABP/R 3, ABP/R 4.

Archdeaconry of Bedford Probate Records: Original wills:

ABP/W 7, ABP/W 8, ABP/W 10.

Custumal: AD 341

#### **Public Record Office:**

Probate Records:

PROB 11/24 fo 23.

PROB 11/32 fo 17.

## 2 Printed Primary Sources

Bell, P. (ed.), Bedfordshire Wills. 1480-1519, B.H.R.S. vol. xlv, 1966.

Bearwood, A. & Weaver, J.R.H. (eds), Some Oxfordshire Wills Proved in the Prerogative Court of Canterbury. 1392-1510, O.R.S., vol. xxxix, 1958, p. 6.

Blaydes, F.A. A Calendar of Bedfordshire Wills, Bedford, 1893.

Brooke, C.N.L. and Postan, M.M. (eds), Carte Nativorum: a Peterborough Abbey Cartulary of the Fourteenth Century, N.R.S. vol. xx, 1960.

Calendar of Proceedings in Chancery in the Reign of Elizabeth, 3 vols, Record Commission, 1827-1832.

Chambers, B. Printed Maps and Town Plans of Bedfordshire. 1576-1900, B.H.R.S., vol. lxii, 1983.

Cirket, A.F. English Wills. 1498-1526, B.H.R.S., vol. xxxvii, 1956.

Clarke, A. (ed.), Lincoln Diocese Documents. 1450-1544, Early English Text Society, vol. cii, 1914.

Dunstan, G.R. (ed.), Register of Bishop Edmund Lacy. 1420-1455. Bishop of Exeter, D. & C.R.S., vols ii-xvi, 19, 1971.

Dunstan, G.R. (ed.), Lincoln Wills. iii. 1530-1532, vol. i, L.R.S., vol. xxiii, 1930.

Ellis, H. (ed.), E. Hall. 'Chronicle', 1809.

Farmiloe, J.E. and Nixeamann, R. Elizabethan Churchwardens' Accounts, B.H.R.S., vol. xxxiii, 1953.

Freeman. C.E. An Elizabethan Inventory, B.H.R.S., vol. xx, 1962.

Foster, C.W. (ed.), Calendar of Administrations, AD 1540-1659, L.R.S., vols xvi and xvii, 1914 and 1918.

Foster, C.W. (ed.), Lincoln Wills, L.R.S. vol. iii. 1912.

Foster, C.W. (ed.), Lincoln Wills. ii. 1505-1530, L.R.S., vol. x, 1918.

Gibbons, A. Early Lincoln Wills, 1888.

Hall, G.D. (ed.), R. de Glanvill. Tractatus de Legibus et Consuetudinibus Regni Angliae, 1965.

Hamilton-Thomson, A. (ed.), Visitations of Religious Houses, vols i-iii, L.R.S., 1914-1929.

Maxwell-Lyte (Sir) H.C. and Davies, M.L.B., Register of Bishop Beckington, 1443-1456. Bishop of Bath & Wells, S.R.S. vol. ii, 1934.

Maxwell-Lyte, (Sir) H.C. (ed.), Registers of Bishop Robert Stillington, 1466-1491, and Bishop Richard Fox, 1492-1494. Bishops of Bath & Wells, S.R.S. vol. lii, 1937.

McGregor, M. Bedfordshire Wills Proved in the Prerogative Court of Canterbury, 1383-1548, B.H.R.S. vol. lviii, 1979.

Moore, J.S. (ed.), The Goods and Chattels of Our Forefathers. Frampton Cottrel  
Probate Inventories. 1539-1804, 1976.

Murray, K.M.E. (ed.), Register of Daniel Rough. Common Clerk of New Romney,  
1353-1380, Kent Records, vol. xvi, 1945.

Statutes of the Realm, vols i-ii, Record Commission, 1810-1828.

Twiss, (Sir) Travers (ed.) H. de Bracton. De Legibus et Consuetudinibus Angliae, 6  
vols, 1878-1883.



### 3 Secondary Sources

#### 3 i *List of Works Frequently Cited*

Bean, J.M.W. The Decline of English Feudalism, Manchester, 1968.

Hicks, M.A. (ed.), Profit, Piety and the Professions in Later Medieval England,  
Gloucester, 1990.

Holdsworth, W.S. A History of English Law, 7th edition, 16 vols, 1956.

Houlbrooke, R. The English Family, 1450-1700, 1984.

Pollock, F. and Maitland, F.W. The History of English Law Before the Time of  
Edward I, reprint of 2nd edition of 1898, 2 vols, Cambridge, 1968.

Sheehan, M.M. The Will in Medieval England, Toronto, 1963.

Spufford, M. Contrasting Communities: English Villages in the Sixteenth and  
Seventeenth Centuries, Cambridge, 1974.

Swinburne, H. A Brief Treatise on Testaments and Last Wills, 1590.

### 3 Secondary Sources

#### 3 ii Books

Place of publication of books referred to is London unless otherwise stated.

Abott, L.W. Law Reporting in England, 1485-1585, 1973.

Abrams, P. and Wrigley, E.A. Towns in Societies: Essays in Economic History and Historical Sociology, Cambridge, 1978.

Amusson, S.D. An Ordered Society: Gender and Class in Early Modern England, Oxford, 1988.

Anderson, B.M. Approaches to the History of the Western Family, 1500-1914, London and Basingstoke, 1980.

Ariés, P. The Hour of Our Death, 1981.

Ariés, P. Western Attitudes Towards Death From the Middle Ages to the Present, 1976.

Aston, T.H. (ed.), Landlords, Peasants and Politics in Medieval England, Cambridge, 1987.

Austin, W. The History of Luton and its Hamlets, Newport, 1928.

Baker, J.H. The Legal Profession and the Common Law, 1986.

Baker, J.H. An Introduction to English Legal History, 2nd edition, 1979.

Bean, J.M.W. The Decline of English Feudalism, 1215-1540, Manchester, 1968.

Bean, J.M.W. From Lord to Patron: Lordship in Late Medieval England, Manchester, 1989.

- Bell, H.C. Introduction to the History and Records of the Court of Wards and Liveries, Cambridge, 1953.
- Bennett, H.S. Life on the English Manor: A Study of Peasant Conditions, 1150-1400, Cambridge, 1956.
- Bird, R. (ed.), Osborn's Concise Law Dictionary, 7th edition, 1983.
- Blackstone, (Sir) William, Commentaries on the Laws of England, 4 vols, 2nd edition, Oxford, 1766-1769.
- Bolton, J.L. The Medieval English Economy, 1150-1500, 1980.
- Bowker, M. The Henrician Reformation: The Diocese of Lincoln under John Longland, 1521-1547, Cambridge, 1981.
- Brigden, S. London and the Reformation, Oxford, 1989.
- Britton, E. The Community of the Village, Toronto, 1977.
- Burn, R. Ecclesiastical Law, 4 vols, 1824.
- Burton, K.M. (ed.), T. Starkey. A Dialogue Between Reginald Pole and Thomas Lupset, 1948.
- Cam, H.M., Coates, M., and Sutherland, L.S. (eds), Studies in Manorial History by A.E. Levett, Oxford, 1938.
- Camp, A.J. Wills and Their Whereabouts, 1974.
- Carnell, H.A. A Kempston History, Kempston, 1966.
- Carr, E. What is History?, Harmondsworth, 1961.

- Chalklin, G.W., and Havinden, M.A. Rural Change and Urban Growth, 1500-1800: Essays in English Regional History in Honour of W.G. Hoskins, 1974.
- Chambers, J.D. Population, Economy and Society in Pre-industrial England, 1972.
- Charles, J., and Hey, D. (eds), English Rural Society, 1500-1800, Cambridge, 1990.
- Cheney, C.R. Notaries Public in England in the Thirteenth and Fourteenth Centuries, Oxford, 1972.
- Clapham, (Sir) John, A Concise Economic History of Britain From the Earliest Times to 1750, 1966.
- Clark, C. Population Growth and Land Use, 1968.
- Clark, P. Crisis and Order in English Towns, 1500-1700, 1972.
- Clark, P. (ed.), The Early Modern Town, 1976.
- Clark, P., and Slack P. English Towns in Transition, 1500-1700, Oxford, 1976.
- Clave, J. The Parish, 1985.
- Coleman, D.C. Industry in Tudor and Stuart England, 1975.
- Cressy, C. Literacy and the Social Order, Cambridge, 1980.
- Cross, C. Church and People, 1450-1660: The Triumph of the Laity in the English Church, Hassocks, 1976.
- Crump, G.C., and Jacobs, E.F. The Legacy of the Middle Ages, Oxford, 1926.
- Derrett, D.M.D. Henry Swinburne (? 1551-1624): Civil Lawyer of York, Borthwick Papers, no. 44, York, 1973.

Dickens, A.B. Lollards and Protestants in the Diocese of York, 1509-1558, Oxford, 1959.

Dickens, A.B. Reformation and Society in Sixteenth-Century Europe, 1966.

Ditchfield, P.H. The Parish Clerk, 1907.

Dobson, R.B. (ed.), Church, Politics and Patronage in England and France in the Fifteenth Century, Gloucester, 1984.

Doubleday, H.A., and Page, W. (eds), Victorian County History of Bedford, 4 vols, 1904-1914.

Dyer, J., Shyall, F., and Dony, J. The Story of Luton, 1964.

Elton, G.R. The Sources of History: Studies in the Uses of Historical Evidence: England, 1200-1640, Cambridge, 1969.

Elton, G.R. England Under the Tudors, 2nd edition, 1974.

Emmison, F.G. Elizabethan Life: Morals and the Church Courts, Chelmsford, 1973.

Emmison, F.G. Elizabethan Life: Home, Work and Land, Chelmsford, 1976.

Engels, F. The Origin of the Family, Private Property and the State, 1902.

Ennen, E. The Medieval Woman, English Translation by Edmund Jephcott, Oxford, 1976.

Farrar, C.F. Ouse's Silent Tide, Bedford, 1921.

Farrar, C.F. Old Bedford, Bedford and London, 1926.

Fletcher, A. Tudor Rebellions, 1973.

Fletcher, A., and Stephenson, J. Order and Disorder in Early Modern England, Cambridge, 1985.

Flinn, M.W. The European Demographic System, 1500-1820, Brighton, 1981.

Fox, R. Kinship and Marriage, Harmondsworth, 1967.

Furnivall, F.J. Harrison's Description of England, 1577-1587, 1877.

Gibson, J.S.W. Wills and Where to Find Them, Chichester, 1974.

Gibson, J.S.W. A Simplified Guide to Probate Jurisdiction, Banbury, 1976.

Glass, D.V., and Eversley, D.E.C. (eds), Population in History: Essays in Historical Demography, Bedford, 1965.

Glassby, W. Bedford Town and Townsmen in 1507, Bedford, 1917.

Godber, J. A History of Bedfordshire, 1066-1888, Luton, 1969.

Goody, J., Thirsk, J., and Thompson, E.P. (eds), Family and Inheritance: Rural Society in Western Europe, 1200-1800, Cambridge, 1976.

Goody, J. The Development of the Family and Marriage in Europe, Cambridge, 1983.

Goody, J. Death, Property and the Ancestors, 1962.

Gottfried, R.S. Epidemic Disease in Fifteenth Century England, Leicester, 1978.

Haigh, C. (ed.), The English Reformation Revised, Cambridge, 1987.

- Hall, J.C. Sources of Family Law, Cambridge, 1966.
- Harding, A. The Law Courts of Medieval England, 1973.
- Hatcher, J. Plague, Population and the English Economy, 1348-1530, 1977.
- Hazeltine, H.D. Roman and Canon Law in the Middle Ages, 8 vols, Cambridge, 1911-1936.
- Helmholz, R.H. Canon Law and English Common Law, 1983, (pamphlet).
- Helmholz, R.H. Canon Law and the Law of England, 1987.
- Hey, D. An English Rural Community: Myddle Under the Tudors and Stuarts, Leicester, 1974.
- Hicks, M. (ed.), Profit, Piety and the Profession in Later Medieval England, Gloucester, 1990.
- Hilton, R.H. The English Peasantry in the Later Middle Ages, Oxford, 1975.
- Hilton, R.H. (ed.), Peasants, Knights and Heretics: Studies in Medieval English Social History, Cambridge, 1981.
- Holdsworth, (Sir) W.S. A History of English Law, 16 vols, 7th edition, 1956.
- Hollingsworth, T.H. Historical Demography, 1969.
- Hoskins, W.G. The Midland Peasant, 1957.
- Hoskins, W.G. Provincial England: Essays in Social and Economic History, 1963.
- Houston, R.A. Literacy in Early Modern European Culture and Education, 1500-1800, Cambridge, 1989.

- Howell, C. Land, Family and Inheritance in Transition: Kibworth Harcourt, 1200-1700, Cambridge, 1983.
- Houlbrooke, R. Church Courts and the People During the English Reformation, 1520-1570, Oxford, 1979.
- Houlbrooke, R. The English Family, 1450-1700, 1984.
- Hunt, D. Parents and Children in History, 1972.
- Hyams, P.R. King, Lords and Peasants in Medieval England: The Law of Villeinage in the Twelfth and Thirteenth Centuries, Oxford, 1980.
- Jones, W.J. The Elizabethan Court of Chancery, Oxford, 1967.
- Jordan, W.K. Philanthropy in England, 1480-1600, 1959.
- Jordan, W.K. The Charities of Rural England, 1961.
- Kerridge, E. Agrarian Problems in the Sixteenth Century and After, 1969.
- Kerry, C.S. The History of the Law of England as to the Effect of Marriage and Property and on the Wife's Legal Capacity, 1879.
- Knowles, D. The Religious Orders in England, 3 vols, Cambridge, 1948-1960.
- Labarge, M.W. A Small Sound of the Trumpet: Women in Medieval Life, 1990.
- Laslett, P., and Wall, R. (eds), Household and Family in Past Time: Essays in Historical Sociology, Cambridge, 1972.



- Laslett, P. Family Life and Illicit Love in Earlier Generations, Cambridge, 1977.
- Laurance, P.M. The Law and Custom of Primogeniture, Cambridge, 1878.
- Lawrence, C.H. Medieval Monasticism: Forms of Religious Life, 1984.
- Lightfoot, J.M. Treatise on the Possession of Land, 1894.
- MacDonald, M., and Murphy, T. Sleepless Souls: Suicide in Early Modern England, Oxford, 1990.
- Macfarlane, A. The Family Life of Ralph Josselin, a Seventeenth Century Clergyman: an Essay in Historical Anthropology, Cambridge, 1970.
- Macfarlane, A. The Origins of English Individualism: The Family, Property and Social Transition, Oxford, 1979.
- Macfarlane, A. Marriage and Love in England, 1300-1840, Oxford, 1987.
- McFarlane, K.B. The Nobility of Later Medieval England, Oxford, 1973.
- Major, K. A Handlist of the Records of the Bishop of Lincoln and The Archdeacons of Lincoln and Stow, Toronto, 1953.
- Marchant, R.A. The Church Under the Law: Justice, Administration and Discipline in the Diocese of York, 1560-1640, Cambridge, 1969.
- Martin, E.A. (ed.), A Concise Dictionary of Law, Oxford, 1983.
- Milsom, S.F.C. Historical Foundations of the Common Law, 2nd edition, 1981.
- Moran, J.H. The Growth of English Schooling, 1340-1548, Princeton, 1985.
- Munby, L.M. Life and Death in Kings Langley: Wills and Inventories, 1498-1659,

1981.

O'Day, R., and Heal, F. Continuity and Change: Personnel and Administration of the Church in England. 1500-1642, Leicester, 1976.

O'Day, R. The English Clergy: the Emergence and Consolidation of a Profession. 1558-1642, Leicester, 1979.

Outhwaite, R.B. (ed.), Marriage and Society: Studies in the Social History of Marriage, 1981.

Palliser, D.M. The Reformation in York. 1534-1553, Borthwick Papers, no. 40, York, 1971.

Peck, G.C. Biggleswade: The History of a Small Market Town, Bedford, 1977.

Pinchbeck, I., and Hewitt, M. Children in English Society: From Tudor Times to the Eighteenth Century, 1989.

Plucknett, T.F.T. A Concise History of the Common Law, 5th edition, 1956.

Pollard, A.J. (ed.), Property and Politics: Essays in Later Medieval English History, Gloucester, 1984.

Pollock, (Sir), F., and Maitland, F.W. The History of English Law Before the Time of Edward I, reprint of 2nd edition of 1898, Cambridge, 1968.

Postan, M.M. The Medieval Economy and Society, Harmondsworth, 1972.

Pound, J. Poverty and Vagrancy in Tudor England, 1971.

Power, E. Medieval English Nunneries. c.1275-1534, Cambridge, 1922.

Prest, W. (ed.), The Professions in Early Modern England, 1987.

Prior, M. (ed.), Women in English Society, 1500-1800, London and New York, 1985.

Purvis, J. An Introduction to Ecclesiastical Records, 1953.

Raban, S. Mortmain Legislation and the English Church, 1279-1500, Cambridge, 1982.

Razi, Z. Life, Marriage and Death in a Medieval Parish: Economy, Society and Demography in Halesowen, 1270-1500, Cambridge, 1982.

Rosenthal, J. The Purchase of Paradise: Gift, Giving and the Aristocracy, 1307-1485, 1972.

Scarisbrick, J.J. The Reformation and the English People, Oxford, 1984.

Sheail, J. The Regional Distribution of Wealth in England as Indicated in the Law Subsidy Returns in 1524-1525, 1968.

Sheehan, M.M. The Will in Medieval England, Toronto, 1963.

Sheils, W.J. The English Reformation, 1530-1570, Harlow, 1989.

Simpson, A.W.B. A History of the Land Law, 2nd edition, Oxford, 1986.

Slack, P. The Impact of Plague on Tudor and Stuart England, Oxford, 1990.

Smith, R.M. (ed.), Land, Kinship and Life-Cycle, Cambridge, 1984.

Smith, W.G. Dunstable and its Surrounds, London and Dunstable, 1904.

Spelman, H. History of the Original of Testaments and Wills and Their Probate, 1727.

- Spufford, M. Contrasting Communities: English Villages in the Sixteenth and Seventeenth Centuries, Cambridge, 1974.
- Stenton, D.M. The English Woman in History, 1957.
- Stone, L. The Crisis of the Aristocracy, Oxford, 1965.
- Storey, R.L. Diocesan Administration in Fifteenth-Century England, Borthwick Papers, 16, 2nd edition, York, 1972.
- Stuard, S.M. Women in Medieval Society, University of Pennsylvania Press, 1976.
- Swanson, H. Medieval Artisans: An Urban Class in Late Medieval London, Oxford, 1989.
- Swanson, R.N. Church and Society in Late Medieval England, Oxford, 1989.
- Swinburne, H. A Brief Treatise on Testaments and Last Wills, 1590.
- Tait J. The Medieval English Borough, Manchester, 1936.
- Tanner, N.P. The Church in Late Medieval Norwich, 1370-1532, Toronto, 1984.
- Taylor, J. The Rules and Exercises of Holy Dying, 1847.
- Thirsk, J. Unexplored Sources in Local Records, Canterbury, 1965.
- Thirsk, J. Economic Policy and Projects: The Development of a Consumer Society, Oxford, 1978.
- Thirsk, J. The Agrarian History of England and Wales, 1500-1640, Cambridge, 1967.
- Thirsk, J. The Rural Economy of England, 1984.

Vale M.G.A. Piety, Charity and Literacy Among the Yorkshire Gentry, Borthwick Papers, no. 50, York, 1976.

Vinogradoff, P. Villeinage in England, Oxford, 1982.

Walne, P.J. English Wills Probate Records in England and Wales with a Brief Note on Scottish and Irish Wills, Virginia State Library, 1964.

Webster, C. (ed.), Health Medicine and Mortality in the Sixteenth Century, Cambridge, 1979.

Whiting, R. The Blind Devotion of the People: Popular Religion and the English Reformation, Cambridge, 1989.

Winchester, B. Tudor Family Portrait, 1955.

Woburn Sands and District Society, The Story of Aspley Guise: The Success of an English Village, 1980.

Woodcock, L. Medieval Ecclesiastical Courts in the Diocese of Canterbury, 1952.

Woodsbridge, L. Women and the English Renaissance: Literature and the Nature of Womankind, 1540-1620, Brighton, 1984.

Woodward, G.W.O. The Dissolution of the Monasteries, 1966.

Wright, S. (ed.), Parish, Church and People, 1988.

Wrightson, K. English Society, 1580-1680, 1982.

Wrightson, K., and Levine, D. Poverty and Piety in an English Village: Terling, 1525-1700, 1979.

Wrigley, E.A. (ed.), An Introduction to English Historical Demography, 1966.

Wunderli, R.M. London Church Courts and Society on the Eve of the Reformation,  
Cambridge, Mass., 1981.

### 3      *iii*      *Articles*

Allinson, K.J. 'An Elizabethan Village Census', Bulletin of the Institute of Historical Research, xxxvi, 1963.

Baker, J.H. 'Uses and Wills', Selden Society, xciv, 1978.

Barton, J.L. 'The Medieval Use', Law Quarterly Review, lxxxi, 1965.

Berry, B.M. 'The First English Paediatricians and Tudor Attitudes Towards  
Childhood', Journal of the History of Ideas, xxxv, 1974.

Bigelow, M.M. 'Theory of Post-mortem Disposition: The Rise of the English Will',  
Harvard Law Review, xi, 1897-1898.

Bowker, M. 'The Commons Supplication to the Ordinaries' Transactions of the Royal  
Historical Society, 1971.

Bramble, J.R. 'Ancient Bristol Documents, ii: A Curious Deed Belonging to the  
Parish of St Mary le Port', Proceedings of the Clifton Antiquarian Club, i,  
1884-1888.

- Brenner, R. 'Agrarian Class Structure and Economic Development in Pre-industrial Europe', Past and Present, xx, 1976.
- Buck, A.R. 'The Politics of Land Law in Tudor England, 1529-1540', The Journal of Legal History, ii, 1990.
- Buckstaff, W. 'Essay on Married Womens' Property', Annals of the American Academy of Political and Social Science, iv, 1893.
- Burgess, C. "'By Quick and By Dead", Wills and Pious Provision in Late Medieval Bristol', English Historical Review, cii, 1987.
- Chaytor, M. 'Household and Kinship: Ryton in the Late Sixteenth and Early Seventeenth Centuries', History Workshop Journal, x, 1980.
- Cheney, C.R. 'Legislation of the Medieval English Church', Economic History Research, i, 1935.
- Coleman, D.C. 'London Scriveners and the Estate Market in the Late Seventeenth Century', Economic History Review, 1951-1952.
- Cornwall, J. 'English Population in the Early Sixteenth Century', Economic History Review, xxiii, 1970.
- Creighton, C. 'Family, Property and Relation of Production in Western Europe', Economy and Society, ix, 1980.
- Dobson, R.B. 'Review of N.P. Tanner – "The Church in Late Medieval Norwich, 1370-1532"', English Historical Review, cii, 1987.

Evans, E.R. 'Testators, Literacy, Education and Religious Belief', Local Population Studies, xxv, 1980.

Faith, R. 'Peasant Families and Inheritance Customs in Medieval England', Agricultural History Review, xiv, 1966.

Gatrell, P. 'Historians and Peasants: Studies of Medieval English Society in a Russian Context', Past and Present, xciv, 1982.

Glassby, W. 'Bedford Town and Townsmen in 1507', Bedfordshire Standard, 1917.

Gross, C. 'The Medieval Laws of Intestacy', Select Essays in Anglo-American Legal History, iii, 1909.

Gross, C. 'Mortmain in Medieval Boroughs', American History Review, xii, 1907.

Hatcher, J. 'English Serfdom and Villeinage: Towards a Reassessment', Past and Present, xc, 1981.

Heath, P. 'Between Reform and Reformation: The English Church in the Fourteenth and Fifteenth Centuries', Journal of Ecclesiastical History, xli, 1990.

Helmholz R.H. 'The Early Enforcement of Uses', Columbia Law Review, lxxix, 1979.

Helmholz R.H. 'The Roman Law of Guardianship in England, 1300-1600', Tulane Law Review, lii, 1977-1978.

Hemmeon, M. de W. 'Burgage Tenure in Medieval England,' Harvard Historical Studies, xx, 1914.



Hilton R.H. 'Individualism and the English Peasantry', New Left Review, cxx, 1980.

Homans, G.C. 'The Rural Sociology of Medieval England', Past And Present, iv, 1953.

Houston, R., and Smith, R.M. 'A New Approach to Family History', History Workshop Journal, xiv, 1982.

Hymans, P.R. 'The Origins of a Peasant Land Market in England', Economic History Review, xxiii, 1970.

Jefferies, P. 'The Medieval Use as Family Law and Custom: the Berkshire Gentry in the Fourteenth and Fifteenth Centuries', Southern History, i, 1979.

Jones A. 'Land and People in Leighton Buzzard in the Later Sixteenth Century', Economic History Review, xxv, 1972.

Levine, D. 'For Their Own Reasons: Individual Marriage Decisions and Family Life', Journal of Family History, vii, 1982.

Lutz, B. 'Recent Research on the History of the Family in Western Europe', Journal of Marriages and the Family, xxxv, 1973.

Macfarlane, A. 'Review of Lawrence Stone – "The Family, Sex and Marriage in England, 1500-1800"', History and Theory, xviii, 1979.

Morris, C. 'The Commissary of the Bishop in the Diocese of Lincoln', Journal of Ecclesiastical History, i, 1959.

Morris, C. 'A Consistory Court in the Middle Ages', Journal of Ecclesiastical History,

xiv, 1963.

O'Day, R. 'Church Records and the History of Education in Early Medieval England, 1558-1642. A Problem in Methodology', History of Education, ii, 1973.

Ohlim, G. 'Mortality, Marriage and Growth in Pre-industrial Populations', Population Studies, xiv, 1961.

Peyton, S.A. 'The Village Population in the Tudor Lay Subsidy Rolls', English Historical Review, xxx, 1915.

Plucknett, T.F.T. 'The Relations Between Roman Law and English Common Law, Down to the Sixteenth Century: A General Survey', University of Toronto Law Journal, iii, 1939-1940.

Razi, Z. 'Family, Land and the Village Community in Later Medieval England', Past And Present, xciii, 1981.

Richardson, R.C. 'Wills and Will-makers in the Sixteenth and Seventeenth Centuries: Some Lancashire Evidence', Local Population Studies, ix, 1972.

Scott, J.W. 'Gender: A Useful Category of Historical Analysis', American Historical Review, xci, 1986.

Searle, E. 'Seigneurial Courts of Women's Marriage: The Antecedents and Function of Merchets in England', Past and Present, lxxxii, 1979.

Sheehan, M. 'The Choice of Marriage Partners in the Middle Ages', Studies in

Medieval and Renaissance History, i, 1978.

Spufford, M. 'The Scribes of Villagers' Wills in the Sixteenth and Seventeenth Centuries and Their Influence', Local Population Studies, vii, 1971.

Spufford, M. 'The Schooling of the Peasantry in Cambridgeshire, 1575-1700', Agricultural History Review, Supplement to xviii, 1970.

Steer, F.W. 'Probate Inventories', History, xlvii, 1962.

Stone, L. 'Social Mobility in England, 1500-1700'. Past and Present, xxxiii, 1966.

Stone, L. 'Literacy and Education in England', Past and Present, xxxvi, 1969.

Thirsk, J. 'The Family', Past and Present, xxvii, 1964.

Thirsk, J. 'Younger Sons in the Seventeenth Century', History, liv, 1969.

Thomas, K.V. 'Age and Authority in Early Modern England', Proceedings of the British Academy, lxii, 1976.

Thomas, K.V. 'The Double Standard', Journal of the History of Ideas, xx, 1959.

Thompson, J.A.F. 'Piety and Charity in Late Medieval London', Journal of Ecclesiastical History, xvi, 1965.

Vann, R.T. 'Wills and the Family in an English Town: Banbury, 1550-1800', Journal of Family History, iv, 1979.

Wall, R. 'The Age at Leaving Home', Journal of Family History, iii, 1978.

Whiting, R. 'For the Health of My Soul: Prayers for the Dead in the Tudor South-West', Southern History, iii, 1984.

Wrightson, K. 'Household and Kinship in Sixteenth-Century England', History Workshop Journal, xii, 1981.

Zell, M.L. 'The Use of Religious Preambles as a Measure of Religious Belief in the Sixteenth Century', Bulletin of the Institute of Historical Research, cxxii, 1977.

Zell, M.L. 'Fifteenth- and Sixteenth-Century Wills and Will-makers as Historical Sources', Archives, xiv, 1979.

### **3      iv      *Theses***

Cahn, E. 'Changing Conceptions of Women in the Sixteenth and Seventeenth Centuries', Unpublished University of Michigan Ph.D. Thesis, 1981.

Erikson, A.L. 'The Property Ownership and Financial Decisions of Ordinary Women in Early Modern England', Unpublished University of Cambridge Ph.D. Thesis, 1990.

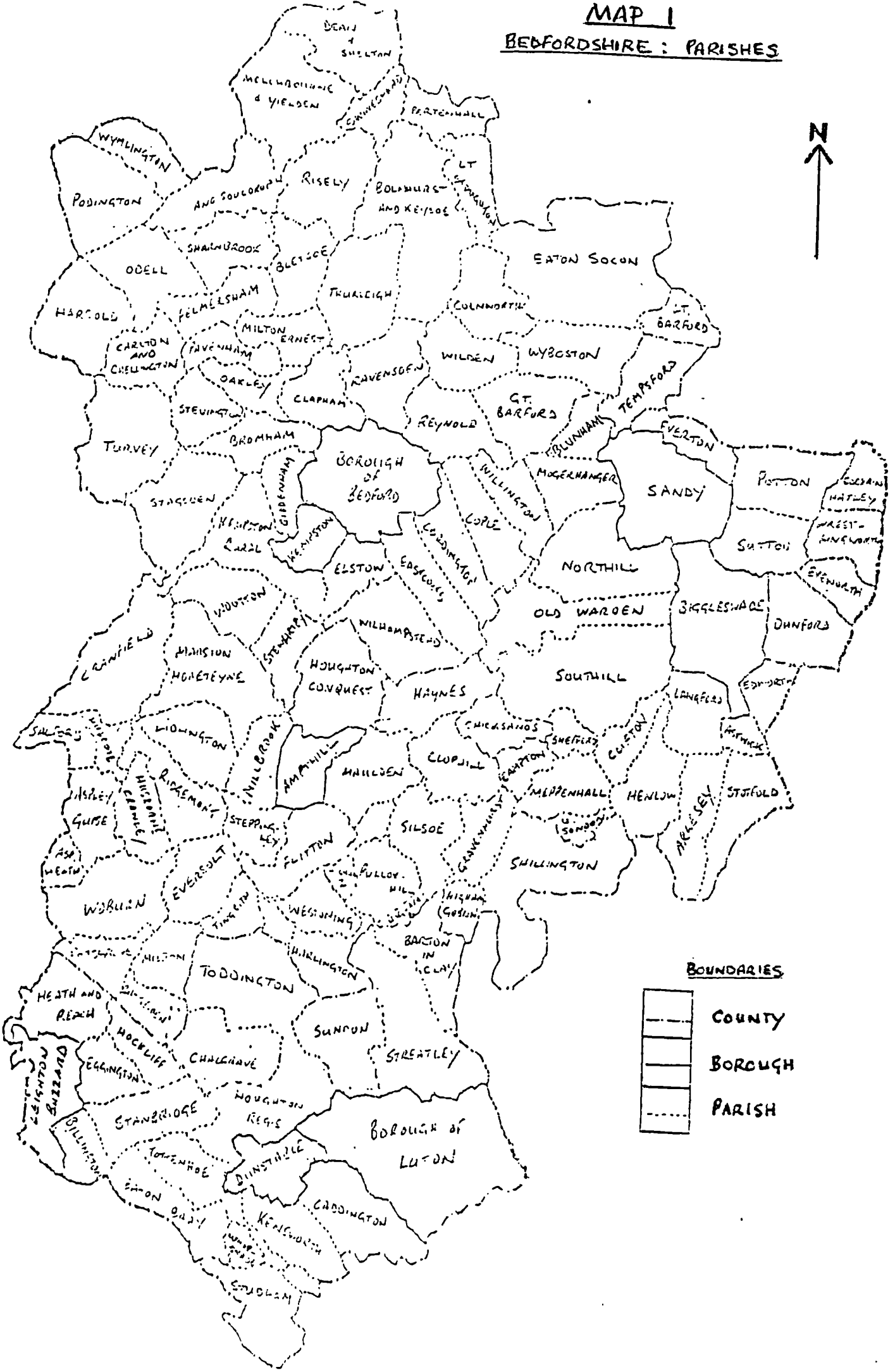
Jones, A. 'The Customary Land-market in Fifteenth-Century Bedfordshire', Unpublished University of Southampton Ph.D. Thesis, 1974.

Zell, M.L. 'Church and Gentry in Reformation Kent, 1533-1553', Unpublished University of California Ph.D. Thesis, 1974.

**3      v      *Typescript***

Marks, R.C. 'The Dissolution of the Monasteries in Bedfordshire: an Introductory Survey', Beds, C.R.O. CRT 170/1/17.

MAP 1  
BEDFORDSHIRE: PARISHES



## BOUNDARIES

COUNTY

BOROUGH

PARISH

# MAP 2

BEDFORDSHIRE : DISTRIBUTION OF TESTATORS  
BY PARISH

